Public Utilities

FORTNIGHTLY

March 14, 1946

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Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

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Pages with the Editors

SOMETIMES we wonder if economic history ever repeats itself—in a broad way at least—just as political and military and other kinds of history are supposed to do. A half century ago economic thought in the United States was torn between discussion of the free silver proposals by William Jennings Bryan and the more revolutionary Single Tax proposed by the late Henry George. As we vaguely recall, from fleeting and apathetic reading of the Single Tax during college days when scholastic social activity seemed so much more interesting, Henry George proposed to have all the taxes boiled down to a single levy on the use of the land.

WE also remember the bitter debates on the subject among our elders, to the effect that the result would snuggle up to Socialism if indeed it did not turn into Socialism. There was a good deal of table pounding about the Single Tax before World War I broke out and distracted our collective minds with more pressing problems.

BEN C. MCCABE

BUT today we are witnessing a trend in government tax policies which certainly seems to be slipping in the direction of old Henry George's Single Tax. We are a long way off, of course, and from our own economic viewpoint we hope that we shall be detoured long before we approach the objective. But regardless of the merits of the argument, the fact remains that we are witnessing, today, a gradual but steady expansion in the field of government activity of a businesslike nature which is nevertheless tax exempt, or largely tax exempt.

* * * *

SOONER or later we shall be smack up against the proposition that something will have to be done about removing the inequity of tax-paying private enterprise attempting to compete economically with tax-exempt public enterprise. Logical answer to that is either to tax public enterprise on the same terms or to remove the tax from private enterprise of a similar nature. If the latter course were followed, about the only remaining source of tax revenue would be real estate and private incomes—since the government and coöperatives have extended themselves into so many fields.

SOMEWHERE in the heavens where unappreciated economists go when they leave this earth, the spirit of Henry George must be smoking an ethereal 5-cent cigar (of the same name) with considerable complacency. Only the other day the new mayor of New York (O'Dwyer) repeated the statement of his predecessor (LaGuardia) that New York city subways can only continue to operate on a 5-cent fare through subsidies paid out of taxation on real estate.

BEN C. MCCABE, whose article on this

is now a technical consulting engineer in subject opens this issue, is probably doing as much as any other single individual in the United States to keep us reminded of this problem of tax inequity. He is the president of the National Tax Equality Association and also head of a number of grain companies controlled by the McCabe interests in the Twin City area. Born in Duluth, Minnesota, MR. MCCABE is a graduate of Lafayette College, and followed his father's footsteps by entering the grain business after service overseas in World War I. MR. MCCABE's article contains, in substance, an address he made before the Investor's League, Inc., at a forum on public utility problems in Chicago on November 29, 1945.

* * * *

BERNARD C. BURDEN, author of the very interesting article on the radio uses in the utility field (beginning page 343), is another newcomer to the pages of this publication. But he is well known in the telephone field where he has made an enviable record as an expert in technology and research. A graduate of Bliss Engineering School in Washington, D. C., MR. BURDEN was for a number of years associated with the Lincoln (Nebraska) Telephone & Telegraph Company. At the outbreak of World War II he served with the WPB as a telephone technical expert, and later became the general engineer of the United States Independent Telephone Association. He

BERNARD C. BURDEN

Steffens-Colmer Studio

JESS P. PASCHALL

Lincoln, Nebraska, and still serves on several scientific and technical committees dealing with radiotelephone technology.

* * * *

JESS P. PASCHALL, whose article on "The Load Dispatcher" appears on page 352, is now an employee of the Portland General Electric Company (Portland, Oregon). Born and raised in Texas, MR. PASCHALL received his early training with the Bell telephone system. He is an associate member of the American Institute of Electrical Engineers, and is now connected with the training of apprentices in station and substation operation in Portland.

* * * *

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

The right of a radio broadcasting company to censor program material is decided by the United States Circuit Court of Appeals. (See page 58.)

THE next number of this magazine will be out March 28th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 1–64, from 62 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

OWEN BREWSTER
U. S. Senator from Maine.

"Compulsory arbitration spells inevitably the totalitarian state—disastrous alike to industry and to labor."

HUGH H. McGEE
Vice president, Bankers Trust Company.

"Our credit agencies should not make 'grants' and refer to them as 'loans' and then denounce the banks for not having made them."

EMIL SCHRAM
President, New York Stock Exchange.

". . . unless the American people are awakened to the underlying conditions tending to create inflation, the necessary remedies may be delayed too long."

FRANK C. RATHJE
President, American Bankers Association.

"Banking's hope is that it shall not be the interests of any special group, but the best interests of the average man which shall determine the financial philosophy in the government of this nation."

LELAND OLDS
Chairman, Federal Power Commission.

"Our commission is the only agency, Federal agency, in the field with full authority covering Federal, state, municipal and other developments in the power field. We are looked upon by the financial world, by the industries themselves, by consumer organizations as the source of all authoritative information in both the natural gas and power industries."

GEORGE S. MAY
Business engineer.

"To say that business does not operate successfully because something either isn't being done at all or it isn't being done correctly is so elemental that it's almost silly. But, in nearly 12,000 instances, 52 per cent had difficulty because things were being done that should not have been done; 74 per cent were not doing things that should have been done; and, in approximately 100 per cent of the cases, somebody was doing something wrong."

EDITORIAL STATEMENT
The New York Times.

"Excessive taxes at any point of the economy lead to unemployment and economic disruption that fall on everybody. Excessive expenditures are eventually paid for, under an unbalanced budget, in an inflation that falls with equal force upon poor and rich alike. Inflation is the equivalent of a flat income tax on everybody, without exemptions. It is also the equivalent of a flat capital levy on savings accounts and insurance policies, without exemptions."

HAROLD G. MOULTON
President, Brookings Institution.

"If we could have an industrial truce during this year of transition—1946—we could quickly readjust the economy, absorb all who wish to work, and lay the foundation for an era of expansion in which all would prosper as never before."

EDITORIAL STATEMENT
The Dallas (Texas) Morning News.

"Regardless of the slowness or rapidity of the development of power generated by atomic fission, our future development is going to be retarded, not by the lack of new scientific devices, but by our inability to readjust our ways of thinking and our investment in capital equipment to the new processes."

CHARLES E. WILSON
President, General Electric Company.

"If we are convinced of the democratic process, of the time-tested value of negotiation, mediation, and judicial arbitration as established by law, of contract obligations that can be enforced on both parties to a dispute and not just one, of equal protection under the laws and obedience to civil authority as established by the Constitution—then let us seek these characteristic American remedies through intelligent legislation and quit drifting down the road to tragedy."

HAROLD KNUTSON
U. S. Representative from Minnesota.

"If the British treasury is in such a precarious condition why did a majority of the voters of the United Kingdom go to the polls at the recent election and vote to have the government take over the coal mines, utilities, transportation, and the banking system, not to mention the liberalization of old-age assistance? Where did they think the billions to finance such an ambitious program were to come from? . . . Why should we finance this journey to Utopia? We were not consulted, neither were we allowed to vote on the proposition."

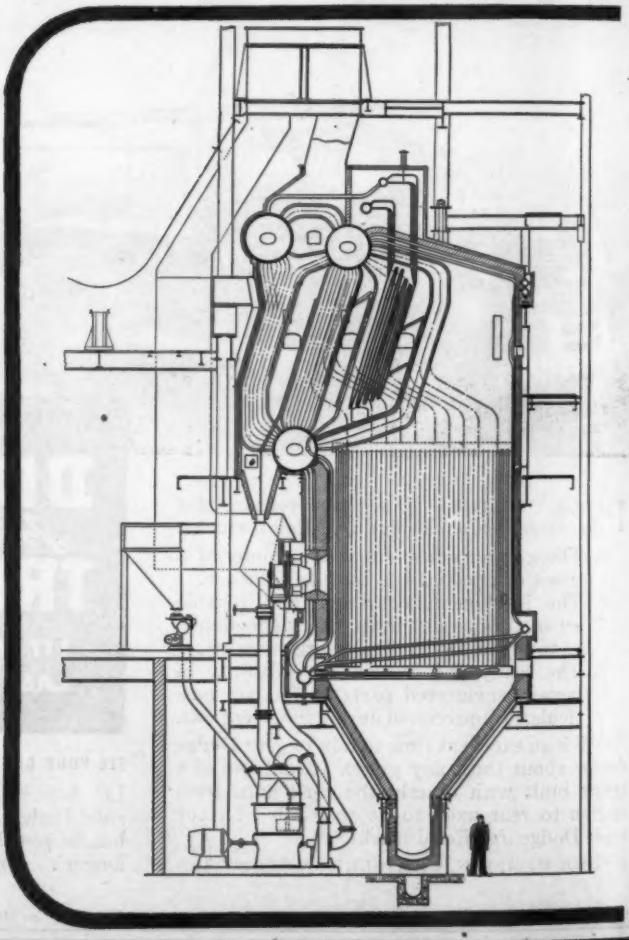
Excerpt from report of Committee on Postwar Tax Policy.

"Experience knows no exception to the rule that, once a government permits an unbalancing of the budget, it finds the task of restoring a balance progressively more difficult. The resulting uncertainties represent one of the most notorious of all deterrents to private investment. The sequel is almost certain to be that progressively larger doses of budgetary inflation are called for, each tending to increase the debt, and at the same time the area of government activity and control."

JOHN E. RANKIN
U. S. Representative from Mississippi.

". . . Communism is nothing in God's world but syndicalism in disguise. It is the old syndicalist drive to break down and destroy American institutions. When they speak of capitalists, they do not mean just the rich or the well to do, they mean the man who owns a home, the man who owns a farm, the man who owns a store or a factory. They would take over everything, if you please, from the steel plants to the dairy farms, and the people would then be subjected to a system of slavery that is revolting to liberty-loving peoples throughout the world."

MONTVILLE



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GRINNELL Mulsifyre
AUTOMATIC FIRE PROTECTION

Utilities Almanack

March

14	T[h]	¶ *American Water Works Association, Minnesota Section, begins meeting, Minneapolis, Minn., 1946.*
15	F	¶ *American Gas Association, Conference on Industrial and Commercial Gas, will hold meeting, Toledo, Ohio, Mar. 28, 29, 1946.*
16	S[a]	¶ *American Water Works Association, New York Section, will hold meeting, Elmira, N. Y., Mar. 28, 29, 1946.*
17	S	¶ *Federal Power Commission resumes natural gas investigation hearing, Charleston, W. Va., Apr. 2, 1946.*
18	M	¶ *Midwest Power Conference will be held, Chicago, Ill., Apr. 3–5, 1946.*
19	T[u]	¶ *Federal Power Commission resumes natural gas investigation hearing, Chicago, Ill., 1946.*
20	W	¶ *Kentucky Telephone Association will hold sessions, Apr. 4, 5, 1946.*
21	T[h]	¶ *Southern Gas Association starts meeting, Galveston, Tex., 1946.* ¶ *New England Gas Association starts business conference, Boston, Mass., 1946.*
22	F	¶ *Southeastern Electric Exchange, Engineering and Operation Section, begins meeting, Atlanta, Ga., 1946.*
23	S[a]	¶ *Missouri Valley Electric Association, Engineering Conference, will hold meeting, Kansas City, Mo., Apr. 4–6, 1946.*
24	S	¶ *National Electrical Manufacturers Association will hold spring meeting, Chicago, Ill., Apr. 8, 1946.*
25	M	¶ *American Water Works Association, Canadian Section, will hold meeting, Niagara Falls, Ont., Apr. 8–10, 1946.*
26	T[u]	¶ *Edison Electric Institute, Commercial Section, begins meeting, Chicago, Ill., 1946.*
27	W	¶ *Nebraska Telephone Association will hold convention, Omaha, Neb., Apr. 9, 10, 1946.*

Authenticated News

Freight Engines at Laramie, Wyoming

Public Utilities
FORTNIGHTLY

VOL. XXXVII, No. 6 MARCH 14, 1946

Should Government-owned Utilities Be Taxed?

Analysis of the discriminatory tax situation which confronts the business-managed utility industry in the United States today—what it costs and what can be done about it.

BY BEN C. McCABE
PRESIDENT, NATIONAL TAX EQUALITY ASSOCIATION

As I see it, the chief problem that besets the electric companies is tax-free competition. Interestingly, the problem is one that they share with a great many other branches of private enterprise—all the way from the corner grocer in the smallest hamlet in America to some of the very biggest of our manufacturers.

It is a problem that is growing in intensity as government plunges more and more deeply into business on its own account, and as it stretches the blanket of Federal income tax exemption and other subsidy and special privilege over coöperatives, mutuals, and other favorites that compete with tax-paying businesses but operate under rules which are quite different from those laid down for private enterprise.

It is estimated that a billion dollars of Federal revenue is being lost through these tax subsidies, and though we have come to a point of tossing billions about as casually as we used to talk about thousands, let me point out that the collection of this lost tax billion by Uncle Sam would give taxpayers 20 per

cent more relief than they are getting under the 5,000,000,000 reduction that Congress has just voted.

Let me point out, also, that the tax loss is constantly becoming greater rather than smaller. Every time a city moves into the electric utility business, with an accompanying flurry of political promises that "rates will now come down where they belong," the Federal Treasury loses millions in tax revenues. And, since it has never been the custom of government to cut its garments to the cloth on hand, the immediate result is that these businesses and individuals that have no way to escape paying taxes must dig a little deeper into their pockets to make up the loss.

The same unfortunate gouge takes place when a big coöperative buys a tax-paying oil refinery, or a farm implement factory, or a grain elevator business, or a cosmetic plant. The former taxpayer becomes exempt, even though the business may be continued without a whit of change in management or markets.

The coöperatives are doing about ten billion dollars of business this year in the United States, and are growing like wildfire—piling up their tax-free earnings for expansion in all directions and into every line of enterprise.

GOVERNMENT corporations, too, representing the investment of actually uncounted billions of public money, not only in electric power projects but in many other lines as well, are growing at a similar rate—arrogantly crowding tax-paying competitors to the wall; setting up their utterly spurious yardsticks of comparative rates and prices; bureaucratically pushing this nation from the security of democracy to the kind of regimented Socialism that England has already adopted.

Borrowing between government authorities, agencies, and corporations has increased the total funds allocated by congressional grants by over $24,000,000,000.

Much of the shift from private to municipal ownership is due to tax immunity of physical property, of income, and of the debt instruments sold to the public in order to pay for the property acquired.

The TVA operates its chemical business at a cost considerably above that of private enterprise, and, in computing costs, it does not include taxes or interest on the investment.

Electric coöperatives, furnished with plenty of REA money to compete with privately owned companies, are also operating ice plants, creosoting plants, and freezer lockers.

UNFORTUNATELY, most businessmen are quite unaware of the astounding ramifications of government in business. Nor do they realize the implications of the river authorities and other projects, which congressional sponsors would have the people of the nation believe are to public advantage, though their effect would generally be quite the opposite.

The story of government in business is almost as old as the Federal government itself. But, apart from the early forms, such as the Bank of North America in 1791, the First and Second Banks of the United States, the chartering of the Panama Railroad in 1904, the use of the corporate structure in the business of government dates from the establishment of the Federal land banks in 1916.

This means that this entire and unparalleled growth of government in business had been accomplished in our adult lifetime, under our eyes, and with our apparent sanction.

The pressure of need during World War I was the incubator which hatched this novel idea in American experience. Out of war came the U.S. Grain Corporation, the U.S. Emergency Fleet Corporation, the U.S. Housing Corporation, the War Finance Corporation, and many others.

The depression, plus the present war, was sufficient to mature the general idea, and from these fledglings as a beginning an economy has been developed in which the government corporation emerges as a dominant and all-embracing business enterprise.

THERE were 101 such corporations before President Truman signed the merger law providing absorption by RFC of several war agencies. They include banks and lending agencies, housing authorities, railroads, steamships, barge lines, manufacturing plants, insurance, prison industries, electric corporations of enormous magnitude, and many others.

Even more breath taking is the tremendous amount of taxpayers' money that is necessary to finance and operate these so-called segments of government. The 1944 executive budget gave borrowing power to only eight of these agencies to the staggering amount of more than $832,000,000,000.

Businessmen and taxpayers should be interested in the reason and purpose of this growth; the cost in dollars to the taxpayer; the impact of government business upon business in general through loss of taxes and interest on funds used.

The reasons given for using the government corporation rather than have business transacted through the established government department are several. As the President's Committee on Administrative Management stated:

"They have freedom from various government controls and restrictions such as budget procedures, personnel regulations governing appointments, discharge, compensation, travel, purchase, etc. They incur debts and settle claims. These exemptions from ordinary governmental routines and procedures give the corporation the power to act with speed and economy for those enterprises . . . rendering continuing economic services that compete with and will inevitably be compared with private enterprise."

THIS is certainly debatable theory, for it must be remembered that unless an electorate holds tightly to the "purse strings" of its government, it can expect no better than is indicated in the U.S. Treasury report of 1944, which shows that government corporations and credit agencies produced a deficit of $1,244,354,252 — roughly $1,000 for every man, woman, and child in the United States.

¶ "THE *coöperatives are doing about ten billion dollars of business this year in the United States, and are growing like wildfire—piling up their tax-free earnings for expansion in all directions and into every line of enterprise.*"

This is a fantastic situation, to say the least—particularly when the losses sustained happen to be our own money. It gives reason for the effort of the Byrd-Butler Bill to herd government corporations into a common corral where their financial operations may at least be watched.

The most conspicuous as well as the most controversial field of government business is that which surrounds the public utilities. This broad classification encompasses rural electrification, both new constructions and the absorption of existing facilities by coöperatives; the creation of new generating and transmitting facilities under such authorities as TVA and the contemplated new river authorities; the shift from private to municipal ownership.

A ROUGH picture of the relative growth of privately owned and publicly owned establishments can be seen from a comparison of figures published by the FPC for the 20-year period 1920 to 1940.

This was the period of the greatest growth in the privately owned public utility field this country has ever experienced; yet, comparing figures on the production of electricity, the privately owned establishments increased output 300 per cent, while the publicly owned establishments increased output 900 per cent.

Comparing the capacity of generating plants alone, the privately owned establishment increased its capacity 260 per cent, while publicly owned capacity increased 880 per cent.

Using either of these tests, the publicly owned utilities were increasing approximately three times faster than were private enterprises during this 20-year period.

What is actually happening to the private utility industry appears in evidence presented to Congress in the hearings on the Agriculture Department Appropriation Bill for 1945. This evidence concerns the REA and its development of coöperatives.

DURING 1943 and through February, 1944, 63 privately owned utility properties were acquired at a cost of $6,570,000. And it should be noted that this income-producing property, once it is transferred to a coöperative, immediately becomes immune to any Federal income tax liability, and most of the states have given them immunity from tax liability under the general property tax as well—some states for as long as twenty-five years by statute.

Coupled with this absorption of privately owned utilities is the additional new construction allotment of $7,870,310 for the same period.

Thus, over fourteen million has been spent for public utility enterprise through REA co-ops. The property itself comes off the general property tax rolls and the income is not subject to Federal income tax.

The allotments alone for the period covered indicate that negotiation is in progress on 44 additional properties for a total cost of $4,446,000, with new construction of $4,460,000, or an additional total of $8,906,000.

The grand total of allotments and acquisitions, therefore, is around $20,000,000, and this in a year when, to use the words of the administrator of REA, "war restrictions hindered our growth."

Public Utilities

"THE most conspicuous as well as the most controversial field of government business is that which surrounds the public utilities. This broad classification encompasses rural electrification, both new constructions and the absorption of existing facilities by coöperatives; the creation of new generating and transmitting facilities under such authorities as TVA and the contemplated new river authorities; the shift from private to municipal ownership."

SINCE the beginning of REA operations, roughly $500,000,000 has been allotted from public funds to the electric coöperatives in order that they may build electrical generating and transmission equipment, as well as buy existing establishments. It is important to note that over 1,200 privately owned and managed operating utilities have thus far been absorbed by the co-ops.

With the rule-of-thumb in the utility industry that each $5 of plant investment will produce $1 of gross revenue, if $500,000,000 is invested in plant, this investment under private management should produce $100,000,000 annually in gross revenue. The utilities have been paying an average of 25 per cent of gross income in taxes—state, local, and Federal.

So that if the REA co-ops carried the same tax load as do private utilities, they would have piled up a tax liability last year of roughly $25,000,000.

But what is equally important is the cold fact that the citizens of the country at large are made to pay through increased taxes in order that the consumers of coöperative power may buy the service at cut-rate prices.

STILL we have not reached the end of this story. Today we find that REA co-ops are deliberately breaking through the charter grants which Congress set up in the original enabling legislation. This is done by the rather simple method of setting up subsidiary corporations to engage in business operations not permitted under the original REA grant of power and completely outside the intent of Congress when it set REA in motion.

As an example of this procedure is the incorporation in Texas, December 4, 1940, of the Texas Power Reserve Electric Coöperative, Inc. of the 71 REA coöperatives 52 are members. On January 10, 1945, this subsidiary corporation purchased two plants owned by Commercial Creosoting Company at Lufkin and Longview, Texas. The purchase price was $125,000. A loan was negotiated with REA for $200,000 at 2 per cent interest.

What will prevent them from organizing similar subsidiaries to manufacture any and everything, however remotely connected with supplying electric energy to rural districts—and in every case competing with private capital in any area of business which it chooses?

In every case they will operate on government credit—and be tax exempt as well.

THUS, we see that government enterprise, as expressed in the rural electric coöperative, is subsidized on three distinct levels: (1) Its administrative costs are paid out of general appropriations, and many services, accounting, engineering, and legal, are provided free to the co-ops by the Federal government; (2) tax immunity at the Federal level and tax privileges at the local level; and (3) interest rates on mortgage loans at government borrowing rates, irrespective of the risks of the individual enterprises involved.

It is difficult to see how privately owned utilities facing these subsidies can long endure these pressures and compete with such overwhelming odds. The answer is that they cannot, unless this government enterprise charges prices which include its own burden of tax costs, administrative costs, and financial costs. The evidence is present in the large number of private establishments which are selling out.

In the electric field, the most overwhelming competitive force — one which cannot but give grave concern to every citizen who would preserve the essential freedoms of American life—is the present TVA and the promise of nine other "river authorities" which, we are assured, are to come.

The constitutional authority vested in Congress to "control navigable streams" is the excuse for putting the government into this business.

TVA was set afoot to "control the flood waters" of the Tennessee river. But, with careful planning and execution, this project, as now developed, is certainly not one in which flood control is of primary importance. Rather it is one of power production and sale, as well as a myriad of other industries. This is not a matter of idle statement, for the annual report of TVA shows that total operating revenues from power operations totaled $35,429,546, while the expense of flood-control operations totaled $917,004.

Thus this corporation, whose excuse for being is flood control, spent slightly more than 2 per cent of its income for its primary purpose!

The Tennessee Valley Authority has emerged in ten years as a government within a government, having virtually complete economic autonomy over an area as large as Maine and New Hampshire combined, with an investment of our money of almost $800,000,000, and operating a hodgepodge of business enterprises which have as little to

do with its initial and avowed purpose as Gabriel had with the land beyond the River Styx.

THE tax-free and interest-free enterprises in which Federal personnel and money are now engaged by the Tennessee Valley Authority include manufacturing of fertilizer, ammonia, ammonium nitrate, calcium carbide, phosphorus, dicalcium phosphate, calcium silicate, dehydrators, alumina, and laminated wood.

It directs operations on a large area of farm land; promotes food processing and marketing associations; processes fish; constructs and operates river terminals; engages in lumbering; operates tourist cabins; rents houses; produces and sells electric power and energy; lends money; quarries limestone; does engineering work outside the TVA area, including Russia; operates grocery stores, service stations, and drugstores.

One of the greatest losses to the community centers around the fact that capital costs for this enterprise never have been shown as a cost of doing business. To measure the "cost of service" without giving recognition to "interest on investment" is mute evidence that this cost is merely shifted to the tax-paying public at large.

After all, in order to buid TVA the Federal Treasury sold bonds. On these bonds it pays interest. None of the interest on government debt is earmarked to any individual project for which the money is spent; this cost drops into oblivion into the general heading "Interest on the Public Debt." For this reason, most government corporations can issue annual statements showing operating profits by the simple expedient of burying the capital costs in the reservoir of "Interest on the Public Debt."

WHAT, actually, is the amount of interest that TVA owes to the people of the United States? Careful computation gives us the amazing total of over $50,000,000—on a simple interest basis only. On a compound interest basis the total would be nearer $55,000,000. Include these interest charges in the TVA power balance sheet for the past four years, and a marked change takes place in operating results. Income reported for 1941 shrinks from a reported $6,990,000 to $2,644,000; for 1942 from a reported $3,673,000 to red ink of $2,120,000; for 1943 from $14,000,000 to $5,810,000; for 1944 from $14,116,000 to $5,636,000.

But what of taxes? An adjustment must also be made for the tax liability equivalent to that which is normal in the public utility field. It is commonplace that local, state, and Federal taxes

¶ "WITH *the rule-of-thumb in the utility industry that each $5 of plant investment will produce $1 of gross revenue, if $500,000,000 is invested in plant, this investment under private management should produce $100,000,000 annually in gross revenue. The utilities have been paying an average of almost 25 per cent of gross income in taxes—state, local, and Federal.*"

ordinarily consume roughly 25 per cent of gross revenue of public utilities. It becomes necessary, therefore, if our calculation of the Treasury's loss is to be correct, that this liability also be read into the record.

But it is not enough to apply current tax rates to the $36,000,000 that represents present gross income of TVA for electric power. We must first provide the wherewithal to pay taxes and interest, and inasmuch as these two items customarily consume nearly 50 per cent of an electric company's revenues, TVA rates will have to be practically doubled.

IN other words, if a private utility wants to show $36,000,000 *before* taxes it must produce at present rates $48,000,000 of gross revenue. TVA would also need to do this if it is in good conscience to be compared with a tax-paying utility. The need for this added income, plus the interest on power investment now completely disregarded, would mean that TVA total gross income would need to be well over $60,000,000 if $36,000,000 is to be kept in its cash drawer. At least a tax-paying and an interest-paying business would need to do this.

If TVA had charged into its expenses the interest on funds that it used, as well as the taxes customarily paid by utilities, the results of the four years' operation I have discussed would have shown an average annual deficit on power operation of roughly $600,000 instead of the profit Mr. Lilienthal has so widely advertised.

And these are TVA's best years!

In the field of municipal tax-free ownership, the entire picture becomes blurred through the absorption of privately owned municipal companies by REA coöperatives, TVA coöperatives, and power districts.

It is in the business of electric power that the municipal tax-free enterprise has made its most significant growth, for, under the impact of high income taxes at the Federal level, local communities have been quick to realize that this tax saving, together with local property tax immunity, gives them a tremendous tax advantage over the present privately owned companies.

THIS drift can be measured by the very obvious increase in municipal bond snancing to cover acquisition of electric light and gas companies during the years 1935 to 1941. The proportion of municipal financing for this purpose in 1935 was 1.4 per cent of the total. In 1941 it was 9.1 per cent of the total, or an increase of 720 per cent in six years.

And why not? The income from these securities sold to the public is federally tax-exempt; the income from the physical property is also tax exempt—so there is a double tax loss to the Federal government. Little wonder that private enterprise cannot compete with public enterprise in this field.

There was an estimated $20,000,000,000 of wholly exempt securities of state and local governments outstanding as of January 1, 1942, of which $8,000,000,000 was held by individuals. Here, then, is roughly $160,000,000 of income, assuming 2 per cent interest rate, which is exempt from Federal income taxes. Little wonder that municipal politicians can make glowing promises to the townsfolk when the issue of municipal ownership is put on the ballot.

The Tennessee Valley Authority

"THE Tennessee Valley Authority has emerged in ten years as a government within a government, having virtually complete economic autonomy over an area as large as Maine and New Hampshire combined, with an investment of our money of almost $800,000,000, and operating a hodgepodge of business enterprises which have as little to do with its initial and avowed purpose as Gabriel had with the land beyond the River Styx."

What has been stated gives only a small part of the appalling story of government's invasion of competitive business; but it is enough to show that if government corporations carried the same load of taxes and financial costs as do private corporations with which they compete, they would operate with hopeless deficits.

As matters now stand, the bulletin of the Treasury of November, 1944, shows operating deficits of over $230,000,000 created by government corporations from their inception until August 31, 1944. This is the latest material available, and this does not include any of the war corporations. These corporations, other than those set up primarily for the war, have loans outstanding of over $20,000,000,000. What capital losses will need to be written off here, no one knows. Obviously, they will be considerable.

Then there are many agencies, authorities, as well as corporations, which do not report to the Treasury, so that their operations are not included in the figures given.

The actual business losses on TVA are a matter of record, and they should lay the ghost that the government can do it cheaper. There is certainly nothing in the record that would indicate that government operation at the local, state, or Federal level is more efficient or more economical when operating in the same field as private enterprise and assuming the same kinds of costs and risks.

THERE is one other correlative conclusion. The vastness of government enterprise—the immense financial empire of a corporation, such as RFC, larger than a combination of any five New York banks, employing over 8,000 people, having loaned over $30,000,000,000 during its lifetime — should give every American taxpayer some sleepless nights. With a national debt now of almost $300,000,000,000, with over $100,000,000,000 spent last year alone, one might well ask: How long can this continue without every productive American being ultimately reduced to common poverty? The recent Federal budget, submitted August 1st, for 1946 estimates nonwar expenditures of $15,288,000,000, or $4,909,000,000 above actual outlays for 1945. Note, please, these are nonwar expenditures.

One can but look with awe and wonder at contemplated spending of such proportions and hope that tax-paying America will bring this chapter to a close before there is nothing left to spend—or to tax.

There is one other conclusion: that government corporations, coöperatives, mutuals, and other federally tax-exempt organizations and corporations must be made to stand their due share of the cost of maintaining an orderly government.

The problem is a major one for the public utilities. But it is not theirs alone. It is equally the problem of all tax-paying individuals and businesses.

CONGRESS, which passed the laws giving coöperatives exemption from payment of Federal income taxes and scores of other special privileges, has full power to change those laws and to say to the co-ops, "From this day forward you shall do business under the same rules that have been established for your competitors—paying taxes and operating without favoritism."

How can it be done? Only by the demand of the people themselves. Only by recognition of the fact that this nation was built under a system of equal justice, equal opportunity, and equal taxation—and that it can survive only by a return to those principles.

A letter that Thomas Jefferson wrote to William B. Bibb is as apt today as it was when it was written, on July 28, 1808:

"Sir: I received duly your favor of July 1st, covering an offer of Mr. McDonald of an iron mine to the public, and I thank you for taking the trouble of making the communication, as it might have its utility. But having always observed that public works are much less advantageously managed than the same are by private hands, I have thought it better for the public to go to market for whatever it wants, when it is to be found there. . . ."

Fifty-two for Forty

JUDGE *C. A. Kimball of Manhattan, Kansas, just doesn't understand Labor with a capital L. He sends in a suggestion that "there ought to be a law" by which farmers would get paid for 52 hogs when they sell 40; ditto for cattle, sheep, wheat, corn, etc. And he wants unemployment compensation for any farmer who has a crop failure, $25 a week for fifty-two weeks (farm crops mostly are annual), and for every member of the farmer's family.*

Radio in the Utility Field

In addition to special emergency channels now in use primarily for private communication, many new public services possible only by means of radio channels may be rendered, especially in the telephone field.

By BERNARD C. BURDEN

Utility executives throughout the country are today giving thought as to how they can best make use of the potential radio applications allocated to their respective industries under the master frequency allocation blueprint drawn up by the Federal Communications Commission and announced last May 25, 1945.

The genuine need in the gas, water, and electric utilities field for radio channels on an *unrestricted basis* has long been recognized. As early as 1936 an electric utility group appeared before the FCC and asked that a number of channels be made available to operating power companies. They also asked for relief from the restrictive FCC regulations which prevented the use of the special emergency frequencies already available except for special corrective situation; *i.e.*, during storms or other emergencies.

Although additional frequencies were subsequently made available, their use was restricted to purely emergency situations, hence the full potentialities of radio could not be utilized.

In spite of this handicap, at the time of the allocation hearings (fall, 1944), the power and gas utilities were operating some 800 special emergency stations. These were grouped on 17 channels shared by some 15 services and represented an investment of approximately $3,000,000.

The FCC allocation plan of 1945 made available to the power, gas, electric, and steam utilities, as well as transit systems and certain other groups, some 31 channels located in 4 bands.

In its May, 1945, report the FCC did not fully pass on the request of the power utilities that a "separate service classification" be given and that broader privileges go with the newly allocated channels. However, it recognized the appeal and promised "appropriate consideration" of the utilities' request for a broader use of radio in the day-to-day construction and maintenance of power lines.

Although those utilities, having use for radio channels for day-to-day

maintenance operational purposes, would have preferred an immediate green light on the unrestricted use of their allocated channels, it is more than wishful thinking to conclude that the FCC will in due time grant the desired privileges.

The restrictive rule (10.23) as now written states that, "special emergency stations may be used only during an emergency jeopardizing life, public safety, or important property. . . ." It is this rule which, in the opinion of the power and other utility groups, must be modified if radio is to be fully effective in the utilities field.

Typical Uses of Radio Channels

THE power, gas, and water utility fields set forth in their report to the FCC that radio channels would be useful for emergencies arising from such sources as:

A. Natural causes which in magnitude and extent vary from hurricanes, floods, and earthquakes to local storms where wind, ice, and lightning are the most troublesome factors.
B. Inherent causes involving infrequent but inevitable failures of physical materials when under constant mechanical or electrical stress and simultaneously subjected to action of the elements, such as gas main breaks, pole failures, equipment breakdown, etc.
C. Foreign interference of both an accidental and malicious nature, which includes fires, stone and gunshot damage, felling trees across lines, breakage of poles and hydrants by vehicles, damage to pipes and cables during road or other construction work, and other situations too numerous to mention.
D. The imposition of extraordinary demands upon utility systems as a result of fires, droughts, unusual weather conditions, etc., which may require unusual and rapid action by utility personnel.

Common-carrier or Private Basis

THE special emergency radio channels now in use in the utilities field are used primarily for private communication purposes. Most of the calls are between a headquarters office and a mobile station (usually a maintenance truck). Utility companies whose demands for this type of service are too limited to justify the investment and operational expense of the headquarters and mobile installations required may, at least in many communities, be able to take advantage of the urban mobile radio service that will probably be available through telephone companies.

This would eliminate the need for fixed stations, except those operated by the telephone company on a common-carrier basis. In many respects radio service to the vehicles of power, gas, or water utilities on a common-carrier basis by the telephone company would seem to offer both economic and operational advantages over privately owned radio systems.

Radio in the Telephone Field

ALTHOUGH most every conceivable use of the vacuum tube was proposed by interested sponsors at the 1944 FCC allocation hearings, no one appeared to ask for radio frequency channels for use in transmitting power. Hence, in the power field, the question of supplementing or replacing wire power lines with radio links did not arise.

The situation in the telephone field is somewhat different. Under the FCC allocation plan, telephone companies (if they get there first) may be able to

offer some new services which are possible only by means of radio channels, as, for example, urban or highway mobile radiotelephone service (sometimes referred to as "automobile-telephone"). Theoretically at least, the new services hold forth promise of additional revenue. However, many practical telephone men feel that the mobile radiotelephone services will be largely a labor of love, though nevertheless an essential undertaking.

The currently high investment costs per mobile radio installation inevitably lead to the conclusion that economically urban mobile service will be difficult to prove in, except in our largest cities. However, present equipment costs are based on current demands and the greatly expanded market for mobile radio transmitter-receiver units should, within a reasonable length of time, result in mobile units selling for $200 or less (present costs $400 to $500). Whether or not telephone companies can break even on mobile service with average station investments of $200 to $300 will depend on rates, popularity of service, operational expense, etc. Your guess is as good as mine. That radio is no easy road to success for the smaller telephone companies is shown in the simple expense-revenue study, Table I, outlined on page 349.

Radio versus Wire

MUCH more promising from an economic standpoint are the potential applications of radio channels as a supplement to or replacement of wire lines. There are four general applications of the so-called "line-of-sight" radio channels[1] in lieu of wire lines, *viz:*

1. For long-haul toll service on a relay basis.
2. For short-haul toll (single link).
3. For special rural subscriber.
4. For short-distance trunk groups between unattended automatic exchanges and control offices.

Radio channels offer the outstand-

[1] The so-called "line-of-sight" channels are those frequencies in the upper portion of the universal radio spectrum which makes use of radio waves so short that they cannot transcend the curvature of the earth. Since they cannot, therefore, for purposes of reliable, practicable reception, pass beyond the horizon—as seen from the position of the transmitting antenna—the receiving area is roughly restricted to the limit of what the human eye can see if one were stationed on the transmitting tower. Hence, the description "line of sight." Obviously, elevation of the point of transmission increases the reception area. Television, or FM radio programs (both of which use "line-of-sight" frequencies), can reach receiving sets only within about a 20-mile radius, if sent from a 10-story building on a flat location. But they can reach almost a 50-mile radius if sent from the top of the Empire State building. And, if projected downward from a transmitting plane flying over 10,000 feet above the earth (stratovision), a surface area circle of reception with a 400-mile radius can be established.

¶ "RECENT *disclosures on radar equipment show that beam widths as small as one degree can be obtained. At 20 miles from the transmitter a 1-degree beam would be only .348 miles in width. With such sharply defined beams a radio channel would in effect occupy an* ETHER RIGHT OF WAY. *This occupancy need not interfere with other channel rights of way in the same area, provided the two beams were kept narrow so as not to overlap at the receiver points.*"

ing cost advantages over wire lines of being independent of subscriber density (rural subscriber service) or mileage between terminals (short-haul toll or trunk service). The cost of serving (by wire) a fixed number of rural subscribers increases materially as the number of subscribers per mile decreases. For the distances normally involved it would appear that the cost of serving the same number of rural subscribers by radiotelephone channels would be virtually independent of their density in a given area.

Similar reasoning would apply to short-haul toll. Whereas the cost of a toll line increases proportionally for every mile of line added, there is normally little difference in cost between a 15- and a 20-mile radio channel. In considering long-haul toll radio links the costs do, of course, increase with distance, due to the necessity for radio relay equipment at periodic points along the circuit. Radio channels also have the advantage over wire lines of bringing the major part of a circuit (channel) investment indoors where it can be maintained with complete freedom from the wear and tear that occurs to open wire lines subject to wind and weather.

GRANTED that radio has great potential possibilities for short- and long-haul telephone toll service and possibly even for rural telephone subscriber service, the smart operator will want to know *when and how much.*

A complete answer to this question would occupy as much time as a Senator Bilbo speech. However, some general observations can be made in much less time and with less mental anguish to the listener.

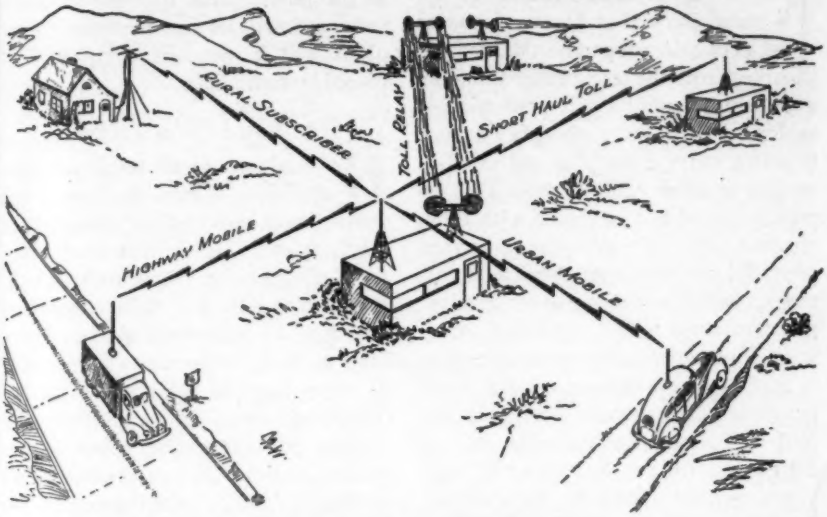
During the frequency allocation hearings the FCC seemed somewhat lukewarm to the thought that radio could be used for the replacement of telephone wire lines. How they may view any extensive adaptation of radio to the wire business is a moot question.

However, a deep look into the crystal ball (plus recent reports on new developments) convinces the author that radio channels will play an important part in both the long- and short-haul toll picture of the future and that complete approval will be forthcoming from the FCC for the full use of radio in the telephone field in order that the public will receive maximum benefit from the benefits that will accrue from this new tool in conjunction with wire telephony.

The prediction that the FCC will not discourage the large-scale use of radio for short- and long-haul toll purposes comes from an analysis of some of the war-developed communication and radar techniques and equipment, plus observations of the intelligent and straightforward manner in which the commission is handling problems that come before it.

In recent weeks a large amount of Army-Navy technical information on radar, multiplex pulse communication systems, and ultra and super high-frequency techniques has been released. This information would seem to provide the answer to the question, "where would the frequencies come from for large-scale use of radio in telephone toll and trunk plant?" How can the telephone industry, with its established pole-line and wire facilities, expect to occupy space on the overcrowded spectrum in competition with other radio uses which have no such alternative?

Figure I
Radio Channel Applications in the Telephone Field



Opportunity in the Microwaves

In the early days the fatherly admonition was to "go West, young man." To the telephone executive seeking to make full use of radio in toll plant, comparable opportunity advice would be to "go up, young man." Up in this case being the ultra short waves of the radio spectrum—above 1,000,000,000 cycles (1,000 megacycles).

Two distinct advantages accrue from the use of these higher frequencies for telephone toll channel purposes:

1. There are more of them.
2. By the use of radar pulse techniques and special parabolic or lens antennas, a multiplicity of sharply defined beams could be obtained which would permit use of the same frequencies by several services in the same area.

Microwaves (above 1,000 megacycles) have properties much the same as optical waves and can be focused or beamed by means of parabolic-shaped antennas (or lens-type antennas) in much the same way that an Army searchlight projects a beam of intense white light many miles up into the sky. These beams can be made very narrow; thus, a radio channel can be made to occupy only a small conical-shaped segment of space between the transmitter and the receiver. Thus, it is perfectly feasible to use the same frequency in a given region for several services or channels. It is like the tiny stab of a long pin through the velvet curtain of space. It does not interfere with the function of the curtain (which may be given over to area-wide broadcast coverage) and the curtain does not inter-

fere with its function of connecting two sharply defined points of contact.

RECENT disclosures on radar equipment show that beam widths as small as one degree can be obtained. At 20 miles from the transmitter a one-degree beam would be only .348 miles in width. With such sharply defined beams a radio channel would in effect occupy an *ether right of way*. This occupancy need not interfere with other channel rights of way in the same area, provided the two beams were kept narrow so as not to overlap at the receiver points. Beams which cross each other at an angle would offer no interference.

As further evidence of the rapid progress in microwave techniques, the Bell Telephone Laboratories showed for the first time at the recent IRE convention in New York, this newly developed *lens antenna*. This unit, which looks like an old-fashioned public address loud-speaker with a metal grill in front, is capable of projecting radio beams which are only one-half degree wide at the transmitter!

The practical telephone executive will want to know "how soon"?

Well there is much to be done before your telephone company can call up a supplier and order out a 12-channel, 1,000-mile microwave toll unit complete with parabolic beam or lens antennas, intermediate relay equipment, and special signaling and supervision units. Good things take time, but they are definitely on their way. In the meantime, telephone companies will carry on as usual—toll open wire and cable pole lines will be in the picture for years to come, but without question they now have a competitor who will give them a good race.

The Western Union Telegraph Company, perhaps less conservative than your author, has already declared in the public press that the poles are coming down and that from their viewpoint will in time be completely replaced by radio links.

The Rural Radio Telephone

HOW about rural telephone subscribers? Where do they fit into this postwar radio *versus* wire picture? Well, opinions differ. Some think that radio is just the thing to reach the fringe area potential rural subscribers who are too far from the nearest wire lines to make it economically feasible to serve them in the normal manner. These advocates of rural radio subscriber links stress the fact that it makes little difference whether a subscriber is 2 miles from the nearest line or 5 miles so far as the cost of providing service by radio is concerned. Whether or not radio can prove in for rural subscriber use will depend in large part on the cost of the subscribers' radio units and the availability of frequencies for the general application of such service. Expense-revenue studies based on present equipment costs do not look too good.

The Bell system is conducting rural subscriber radio tests on a small scale at Cheyenne Wells, Colorado, and the results of these experiments should prove helpful in sizing up the possibilities of such radio service.

The Power-line Carrier Experiments

THE use of radio to bring rural telephone service to more farmers is but one approach to the problem and it is too early to say whether or not it is the best. *Carrier telephones* (which are,

of course, not radio at all, but electronic) operating on rural power lines offer interesting possibilities, and active experimentation with working installations are now in progress.

The results thus far have been encouraging.

Another approach is via *rural joint use* with power lines. Both power-line carrier and joint use on power poles have some objectionable features not found with radio. However, these methods avoid the frequency problem inherent to the use of radio, and because of the greater complexity of radio systems they may be easier to prove in.

Certain inevitable hazards accrue to the use of high-voltage power circuits and poles on a carrier channel or joint-use basis. High-noise levels on telephone circuits with either arrangement are a distinct possibility.

The technical problems involved in the use of radio run largely to the matter of obtaining satisfactory transmission paths between central office and the rural subscriber, and the question of the availability of sufficient frequency channels to permit a wide application of farm radiotelephones.

It would in many cases be difficult to get a "line-of-sight" or even "near-line-of-sight" path between subscriber and control office without the use of antenna of prohibitive height. This problem would be partially solved (for many areas) if the FCC permits telephone companies to make maximum use of the lower frequency television channels which the allocation proposal suggested be shared with telephone services on the theory that the frequencies could be "repeated" in different areas without interfence. But, if *stratovision* (television projected downward from planes flying at high altitudes all over the country) is found to be a practical method of furnishing television service on a nation-wide basis, there may be little chance for telephone companies to use jointly these lower frequencies on a regional sharing basis.

Table I

ROUGH STUDY OF COST OF RENDERING URBAN MOBILE RADIO TELEPHONE SERVICE IN A SMALL CITY

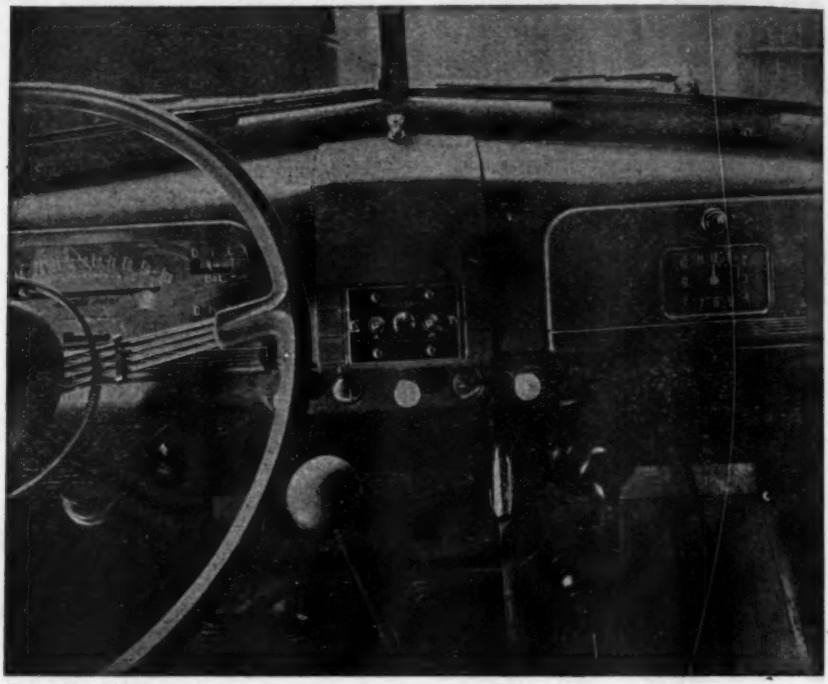
Assume..... 20 subscribers in a city of 70,000 population
10 subscribers per channel
2 central office radio channel units @ $4,000 each
20 mobile radio channel units @ $450 each
10-year equipment life (10% depreciation)
$20 monthly rental per mobile installation

	Expense		*Revenue (Yearly)*	
C.O.	$8,000.00 x 22.8%	= $1,824.00	20 subscribers @ $240.00	
Mobile	9,000,00 x 26.0%	= 2,340.00	20 x $240.00	= 4,800.00
Operating	estimated	= 1,000.00		
	Total.....	$5,164.00		$4,800.00

Annual operating loss $364.00

Composition annual charge ... C.O. 10% dep., 6.0% int., 1.2% taxes, 5.6% maint. Mobile same except maintenance 8.8%.

Note—Central office radio equipment costs include installation, engineering, etc.



Authenticated News

Close-up view of an automobile radiotelephone installation. A push button contained in the handle of the handset switches the equipment from the "sending" to "receiving" position.

Common-carrier versus Private Operation

At the allocation hearings last November, it was evident that the commission was not ready to concede that now is the time and place to replace wire lines with radio channels. It was evident to those in attendance at the hearing that radio frequencies would not be available to telephone companies merely for the asking. However, the commission was not unmindful of the needs which were shown for radio channel allocation for such services as rural subscriber, short- and long-haul toll, provided, of course, that a company having occasion to render these services by radio would make a proper showing of need, convenience, and necessity.

In attempting to predict what views the commission may take, it seems likely it might add up to something like this: Permanent radio channels will undoubtedly be made available to telephone companies for rendering the two types of mobile services, provided the experimental work now under way

demonstrates that this service can best be rendered on a common-carrier basis. Other things being equal, it seems logical that mobile service could be more efficiently rendered on a common-carrier basis by the local telephone company than on a limited-service basis by a private company.

If the public is ever to reach the goal of *universal service* which would mean that anyone could talk to anyone else regardless of whether they be at home, in Europe, on a bus, or horseback, it would seem to be necessary that mobile radiotelephone service be rendered by telephone companies.

Effect of Demand or System Costs

FROM the standpoint of the return on the investment required, some telephone executives feel that urban or highway mobile radiotelephone service would not pay their keep but would need to be subsidized by the other telephone services normally rendered. When a new service is first considered it is not unusual for its future to appear less than bright. In the initial stages of the development of a new service the investment costs are usually high and the demand for the service low. As time goes on the demand increases as the public becomes familiar with the advantages to be gained by a new service. The greater demand makes possible lower production costs on the equipment. Improved "know how" helps bring down costs and eventually the service pays its way. Urban mobile service will probably be found economically feasible in metropolitan areas even at the outset. In the smaller cities there will be some demand for urban mobile service but whether this demand will be sufficient to justify the investment necessary to set up this service is questionable.

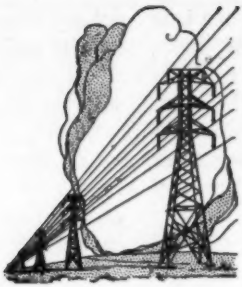
The FCC wisely anticipates that communication companies and private interests will need to feel their way along with the new mobile services and for this reason the commission is initially issuing only *Class 2 experimental licenses* to telephone companies or others wishing urban or highway mobile service. They figure that after institution of a "shake-down trial" everyone, including the commission, will be in a better position to judge the merits of who should render what service where.

ALREADY many licenses have been issued to Bell system companies to render urban mobile radiotelephone common-carrier service on an experimental basis in our principal cities throughout the country. The Bell system also has plans for inaugurating highway mobile radiotelephone service on several of the main trunk highways in Illinois and Ohio.

The independent segment of the telephone industry is likewise active and through its United States Independent Telephone Association is busy with studies looking to full participation of independent companies in the adaptation of radio to telephone purposes.

As Gabriel Heatter would say (with sound effects), "it looks like big news ahead folks."

¶ "THERE *is no government formula, no matter how ingenious, that can successfully separate the treatment of wages and of prices.*"
—EDITORIAL STATEMENT,
The New York Times.



The Load Dispatcher

The man who must remain calm at all times and watch over the lives of men working on electric lines and equipment, as well as keep the kilowatts constantly working for the public.

By JESS P. PASCHALL
DISPATCHER, PORTLAND GENERAL ELECTRIC COMPANY

Ask the man on the street what a load dispatcher is and he will probably tell you that it is the fellow who loads passengers onto street railway cars and trolley busses at some prominent downtown corner. That is what one man thought I was when I told him that I was a load dispatcher for my company.

System operator would be a more descriptive title for the job, not that the fellow who loads cars is unimportant or unnecessary for his work keeps traffic speeded up and women with bundles off your feet while you are getting on the car. But there is as much difference in this man's work and that of the load dispatcher as there is in flying a kite and flying an airplane.

The load dispatcher's job has never been dramatized like that of a train dispatcher. Everyone knows what a train dispatcher is. He is the man who dispatches trains and keeps them from trying to use the same track at the same time. I think many have had a desire at some time in their lives to be a train dispatcher. We can visualize the dispatcher sitting in his office directing fast-moving trains. He has an important job and even little boys know it.

But what about the load dispatcher? Who is he and what does he do? What kind of a fellow does it take to make a good load dispatcher? Where do the power companies get them? These are the questions the people who receive my company's service seem to want to know and I sometimes wonder why my company doesn't take the time to tell its customers about this fellow who plays such a dramatic part in the operation of the electric utility.

We shall answer some of these questions; but first let's set forth the qualifications for a load dispatcher as required by my company:

1. He must possess a personality that will permit him to get along with people.
2. He must have a willingness to observe and learn.
3. He must be capable of making a quick and accurate decision and act accordingly.
4. He must be firm but not unreasonable with those who take orders from him.
5. He must be tactful in getting what he wants done by the men who take orders from him.
6. He should learn as much as possible about what goes on in other departments of the company so that he will better understand how to coöperate with all departments.
7. He should know each official and department head personally so that he can discuss matters over the telephone with them and feel more at ease. (Come in Mr. President, I'd like to meet you. That is a wisecrack. We know him personally.)
8. He should visit the stations and substations and get a mental picture of the equipment and lines that mean so much to his system.
9. He should know the normal and peak loads that are carried on the generators and lines that form the network from which the customer is served.
10. He must know what will happen if some certain line or piece of equipment is suddenly taken out of service.
11. He must be able to figure out how many kilowatts there are in a river's flow when these river readings are given to him as they are.
12. He must know the difference in cost of steam and hydroelectric power.
13. He should study operating orders and follow them closely.
14. He must be capable of properly executing energy purchase contracts with other companies and know the capabilities of interchange of power in power-pool operation.
15. *He must remain calm at all times and constantly watch over the safety of men who go to work on lines and equipment that is held for them by him.*

THERE you have it. That list of qualifications indicates the importance of the job, the responsibilities of which are not understood by the public. The load dispatcher sits in his office and, with a battery of telephones and radio, directs the operation of the electric system. Before him on the wall of his office is a large map of the entire system and not one high-tension switch is operated except on his orders. He is the man behind the gun when it comes to the customer's service. He sees to it that the service remains on as long as it is humanly possible to keep it on.

Some queer things happen over the network of copper lines occasionally, but the public seldom knows about them. All the customer knows is that his lights dim and flicker a bit and maybe go out altogether.

We once had the entire electric system over seven counties practically paralyzed by two chipmunks. One had chased the other up a pole carrying 57,000 volts and there they apparently came to their end in what later looked to be a death kiss. One little fellow had apparently hopped up on the big insulator to which the high-voltage wire was fastened, and the other, perhaps, had run out on the crossarm and raised his nose up to the gal friend, causing the fatal result. How do we know this? The hind feet and noses of both chipmunks were burned off when their charred bodies were found on the

The Load Dispatcher's Job

"LOAD dispatchers usually receive their early training in the operation of stations and substations. They are picked from many men and carefully trained to operate the power system from some central point. They have dedicated themselves to the task of keeping that service as perfect as it is humanly possible for them to make it. The load dispatcher must not only be constantly on the watch over the safety of men who care for the lines, but . . . he must see that the kilowatts keep working for the public."

ground and under the line that had burned down.

LITTLE boys flying kites sometimes cause electrical disturbances for the power companies and sadden the hearts of men like myself who dispatch troublemen to the scene only to find that nothing can be done to restore life. Campaigns are carried on by the power companies to prevent this but boys, it seems, will be boys, and occasionally the kite string becomes entangled with the bare copper wire carrying dreadfully high voltages, and trouble ensues.

The load dispatcher of the power company tries to operate his system at all times so that service will be dependable and safe, just as the train dispatcher does his railroad. But, there are many high-tension lines running over a wide area and they are all tied together to form the network, and when one becomes faulted they are all affected more or less. Delicate little relays are set to trip a faulty line out of service before it causes too much disturbance, but sometimes the relay doesn't work quickly enough to prevent large generators from tripping off the system and causing a major shutdown.

Trouble cars, equipped with 2-way radio sets, like those of the police prowl cars, are constantly in touch with the load dispatcher and can quickly be dispatched to the scene of trouble for making hurried repairs. These men never go on a line without first getting a clearance from the load dispatcher. He has the line taken out of service and

properly tagged for them and then he is responsible for their lives until they call clear of the circuit.

THIS little squad of men, who direct the operation of a power system, is on duty twenty-four hours of every day in every year and the load dispatcher's orders cannot be countermanded by even the president of the company. The load dispatcher is given full authority to operate the system as he thinks best to insure continuity of service. The weather and drunken drivers cause him most of his troubles. The wind blows tree limbs off and into lines and the drunken driver crashes into power poles carrying high-tension wires.

Load dispatchers usually receive their early training in the operation of stations and substations. They are picked from many men and carefully trained to operate the power system from some central point. They have dedicated themselves to the task of keeping that service as perfect as it is humanly possible for them to make it. The load dispatcher must not only be constantly on the watch over the safety of men who care for the lines, but, as stated, he must see that the kilowatts keep working for the public. That is why the requirements for personnel are so stiff.

So, if a customer's service, as well as that of his neighbor up and down the street, is out, the customers can be pretty sure that the load dispatcher knows about it and is doing everything he can to have it restored.

While the load dispatcher of a power company is not so well known by the public as is a railroad train dispatcher, the load dispatcher, nevertheless, is holding down a mighty important and responsible job. It's no place for an absent-minded professor.

Problem of Security

". . . the managers of business are today completely aware of the need to provide the element of security in every job they project, both as broad social insurance and more specifically as a necessary adjunct to efficient operation. But business asks one thing of the young men who are entering upon an internship—that they apply their native good sense to the problem.

"Security cannot ever be provided by mere legislation, by the command of government, by the clamor of special groups who are long on propaganda and short on arithmetic and who care not where the chips may fall so long as the ax goes home."

—CHARLES E. WILSON,
President, General Electric Company.

Government Utility Happenings

Washington Whispers Worry Valley Authority Foes

WHEN Representative Henry M. Jackson (Democrat, Washington) halted action on his Columbia Valley Authority Bill before a House committee early in February, Washington dopesters were willing to give odds that all the TVA-style "authority" plans were dead for the current year. Now they are not so ready to cover such bets. There is a more than vague suspicion that early obituary notices for the various valley authority schemes may have been a bit premature.

There are rumors and rumors floating about the nation's capital these days, but the current report anent the pending revival of the valley authority plans has a number of completely plausible ramifications. In the first place, the story comes from sources close to the leading proponents of the valley authorities. And the latter group, incidentally, lately has assumed what might be termed a "wait-and-see" attitude which may be significant.

As we get the story, President Truman within a few months is expected to send Congress a gigantic public works program, a long-range, catch-all plan contemplating the construction of public buildings, flood control, rivers and harbors improvements, reclamation projects, highway and airport construction, etc., for the period of the next several years. This program, the story continues, will be linked with the objectives of the so-called Maximum Employment Act, which recently completed its stormy course through Congress. The President's program, it is said, probably will call for immediate expenditure of a comparatively small sum, its chief purpose being to chart methods of carrying out future public works projects. Along these lines, it will propose that development of the nation's rivers be conducted by valley authorities.

THERE are several glowing flaws in this report. It is difficult to find anything in the watered-down Maximum Employment Act finally approved by Congress which would justify Mr. Truman in presenting an over-all public works program within the next few months.

The act does call for the setting up of an advisory council to make economic studies for the President and recommend to him policies designed, among other things, "to avoid or diminish economic fluctuations and to maintain employment, production, and purchasing power." Any reports approved by the President on these findings are to be submitted to a special congressional committee for further study.

On the other hand, the President conceivably could undertake to facilitate the promotion of "maximum employment, production, and purchasing power" with a general public works program to be inaugurated before the complicated machinery authorized by the act could be set up. This is an election year. The chance to promise constituents future public works projects well might influence many an uneasy Congressman to support such a program. These Congressmen also would be induced to overlook sections of the Employment Act which provide for the protection of "free competitive enterprise" in passing upon any

project which might conflict with these provisions.

It should be remembered that President Truman never has definitely renounced his endorsement of the valley authority idea, which he sanctioned in a speech at the start of his administration. It is reported that Harold Ickes, jealous of the river development rights of the Interior Department's Bureau of Reclamation, persuaded the President to refrain from committing himself on the MVA and CVA bills before Congress, despite the predictions of the authors of these measures that they would have presidential support.

Before leaving the administration in a huff over the Pauley nomination, Ickes stated in his last departmental report to the President and in other papers that he was not opposed to the authority concept of coördinated river development in itself. His objections, he added, were due to the fact that the TVA type of administration, as recommended in valley authority bills before Congress, would not be responsible to the Interior Department, which had been carrying on river development through the Reclamation Bureau for many years.

THE presence of an Ickes intimate, Michael W. Straus, at the head of the Reclamation Bureau might indicate continued opposition to the valley authority idea from that quarter—as long as such plans excluded the bureau from the river valleys. The affable and ambitious Reclamation commissioner, however, could not be expected to object to any valley authority proposal so designed as to employ his "experienced" bureau on river development in the East, as well as in the 17 western states which have been its traditional field of operations.

River basin development still absorbs the President. During congressional hearings on appropriations for civil functions of the War Department, it was revealed that the President had requested from the Corps of Engineers a schedule of rivers and harbors and flood-control projects to be undertaken over a 6-year period. A similar schedule was obtained on irrigation and reclamation projects planned by the Bureau of Reclamation. Incidentally, these 6-year programs, consisting chiefly of projects approved without appropriations by Congress during the war years, will involve total Federal expenditures of nearly $7,000,000,000.

Meanwhile, backers of the valley authority plans have been strangely quiet. A few days after the Maximum Employment Act passed Congress, Representative Jackson asked the House Rivers and Harbors Committee to delay action on his CVA Bill (HR 5083). Just a week previously, he had been clamoring for committee action on this bill. The Jackson Bill's companion measure in the Senate (S 1716) is more or less dormant in the hands of the hostile Commerce Committee, but its sponsor, Senator Hugh B. Mitchell (Democrat, Washington), seems unperturbed. Late in January, by a move similar to that of Representative Jackson's, Senator Murray (Democrat, Montana) suspended committee studies of his MVA Bill (S 555).

Active opponents of these measures, chiefly irrigation people and other western water users' groups, felt they had earned a hard-won victory. Certainly they demonstrated their ability to prove that the great majority of the western folk actually in need of water are opposed to having that need filled by TVA-type river agencies. They further demonstrated their ability to slap down each individual valley authority bill as it came under congressional scrutiny.

Whether or not these groups can oppose as effectively any broad proposal for a series of valley authorities all over the country, especially if such a plan has the backing of the President as well as that of the Bureau of Reclamation, poses another question.

St. Lawrence Waterway Hearings Open

EARLY hearings on the St. Lawrence waterway agreement between the

United States and Canada developed a number of familiar arguments in favor of the project. The first week of the hearings before a subcommittee of the Senate Foreign Relations Committee was given over to proponents of the agreement, with the opposition taking over the testimony during the second week.

Dean Acheson, Under Secretary of State, opened the hearings by urging that the agreement be approved to aid industry in the Great Lakes area and to further the national defense. Chairman Leland Olds of the Federal Power Commission declared that power features of the waterway project would bring low-cost electricity to New York, parts of Pennsylvania and New Jersey, and all of the New England states except Maine. Administrator Claude R. Wickard of the Rural Electrification Administration testified that St. Lawrence power development "should enable nearly all of the farms in the New England and Middle Atlantic states to receive the benefits of electric service at rates which will permit complete utilization of electric energy."

As might have been expected, the most surprising contentions in favor of the project were advanced by Secretary of Commerce Henry A. Wallace, who hailed the agreement as the first opportunity to implement the Maximum Employment Act. Acceptance of the St. Lawrence agreement, he noted, would carry out the act's intent to avoid deflation and large-scale unemployment. Mr. Wallace's thinking along these lines obviously is considerably in advance of that of other members of the administration, who currently are fretting over such limited problems as inflation, shortages of materials, and labor strife.

Wickard Slaps at Co-ops For "Cream-skimming"

RELUCTANCE of certain REA-financed electric coöperatives to extend their power lines beyond the most populous rural areas is causing considerable concern in Washington, D. C., headquarters of the lending agency. Members of the REA staff are bitter in their criticism of co-ops which they declare are using all their net revenues to pay off in advance their government loans instead of investing a portion of such funds in bringing electric service to scattered farms beyond the reach of their present power systems.

Such practice, it is pointed out, makes the co-ops subject to the same charges of power market "cream-skimming" which have been directed by REA in the past against privately owned power companies. In a recent speech at Charlotte, North Carolina, REA Administrator Wickard took cognizance, for the first time, of such practices by government-financed co-ops and started the campaign to terminate them. Speaking before a group of co-op managers and directors, he tackled the problem in the following language:

> Congress has given REA a mandate. REA is wholly dependent upon the performance of its borrowers, more than 900 member-owned coöperatives, in carrying out that mandate. It is important, therefore, that every coöperative fully understand the meaning of the congressional mandate. Congress assuredly does not intend REA to lend money to any agency that neglects or refuses to extend service to every person in its area who can be reached under the liberal credit terms provided by law.

Evidently the failure of some co-ops to carry out these provisions of REA's "mandate" have caused the agency some embarrassment. This inference is contained in the following passage from the Wickard speech:

> When a member of an REA-financed coöperative fails to support a policy of complete area coverage in the territory of his coöperative, he puts himself in the position of taking an unfair advantage over his neighbors under a law enacted for the benefit of all. In addition, he is using the tactics of the power companies which led to the passage of the REA Act. I have been much impressed recently with the statements of influential members of Congress, who hope that REA coöperative officials will not adopt such tactics.

EXERTION of moral pressure by means of such statements probably rep-

presents the limit of REA's ability to discipline co-ops which have shown signs of "back sliding" in this connection. However, it is certain that future REA loan allotments will be tied up with contract clauses, definitely assuring the application of the full-area-coverage principle.

At Charlotte the REA Administrator also continued his activities to prevent the purchases of co-ops by private power companies. Specifically mentioning recent negotiations of North Carolina co-ops for the sale of their properties to a private company, he warned that such sales would leave the co-op consumers "wholly at the mercy of the power company." He urged co-op members to hold on to their utility property until "low-cost public power" becomes available from the Buggs Island reservoir project.

These remarks were reminiscent of REA efforts to halt the sales of two coöperatives in the Pacific Northwest in the past few months. Representatives of REA headquarters carried urgent messages from Mr. Wickard to the members of both co-ops, advising them to retain their properties until cheap Bonneville power could be extended to their areas. However, both coöperatives decided to sell out their holdings to the Idaho Power Company.

Report on Bonneville

BONNEVILLE POWER ADMINISTRATION revenues reached a new high of $22,990,018 during the fiscal year 1945, according to the annual report of the Bonneville agency submitted recently to Congress. Energy deliveries for the period totaled 8,513,125,169 kilowatt hours.

"On the basis of energy deliveries," the report says, "the Bonneville-Grand Coulee power system compares favorably with the Tennessee Valley Authority and was the third largest power system in the United States. Energy deliveries of the TVA power system amounted to 10,314,745,709 kilowatt hours during fiscal year 1945. Energy production from the Bonneville and Grand Coulee plants exceeded the combined production of all other utility systems in the Pacific Northwest region."

The report shows that Bonneville revenues were derived during the year from several sources in the following proportions: $36,188,589 from sales of power to light metals industries; $8,299,162 from other industries; $1,057,801 from military establishments; $5,910,277 from publicly owned utilities; $11,904,553 from privately owned utilities; and $216,860 from other sources.

The report also noted that since the end of the war substantial cutbacks had been made in war production and use of power for war plants in the Bonneville area "with the result that there is a current temporary surplus of power to be remarketed in the amount of approximately 500,000 kilowatts."

"Studies of normal load growth for the region indicate that the power surplus is temporary and the administration has requested installation of three additional units at Grand Coulee to be completed during the fall of 1947 or early in 1948 and three more units in 1949," the report adds.

"Despite surplus of power at the dams, substantial shortages exist in the outlying areas requiring an immediate expansion of transmission facilities. It is in the government's interest to take full advantage of the situation by building lines into the power shortage areas. These lines were held up during the war, but the markets exist and actual returns to the government can be made by building these lines."

The report urges the completion of a number of river development projects in the Northwest "recently authorized or pending authorization by the Congress." Major projects in this group include the Hungry Horse dam in western Montana, the Cabinet Gorge project in northern Idaho, completion of facilities at Grand Coulee dam, and the Foster Creek, Lower Snake river, McNary dam, and Willamette Valley projects. Several smaller projects also are urged in the report.

Wire and Wireless Communication

UNION officials, who last month called a nation-wide telephone strike for March 7th, were scheduled to meet with Secretary of Labor Schwellenbach February 26th to discuss a program to avert the walkout.

In announcing the meeting, Edgar L. Warren, chief of the Labor Department Conciliation Service, remarked: "We can see no reason why the telephone dispute cannot be settled without a strike."

Joseph A. Beirne, president of the National Federation of Telephone Workers, requested assistance of the department on February 21st to bring about a settlement. He was expected in Washington from Memphis, where the NFTW executive board met last month, on February 24th.

He was accompanied by Carlton W. Werkau, secretary-treasurer of NFTW, newly named strike chairman. Werkau announced in Memphis on February 23rd that strike headquarters would be opened in Washington.

The union, he said, would resort only to "peaceful but effective" methods to enforce its demands for shorter hours and higher wages. He plans to call upon the women members of the union, who number 140,000 of the 250,000 members claimed, to take part in carrying out the work stoppage strategy.

"Psychologically, the presence of women on our picket lines will strengthen us," he said. A new departure in picketing technique was suggested by Werkau. He said:

> Suppose, for instance, we station one picket in front of the AT&T building in New York city. The wires from that building radiate to all sections of the United States. That, so far as our federation is concerned, constitutes a nation-wide, bona fide wire picket line, and each of us will respect it.

All individual bargaining by member unions of the national federation was ordered halted by Beirne last month. Henceforth, he announced, all negotiations on behalf of affiliated unions will be conducted by the federation.

* * * *

CHARLES R. DENNY, JR., the new acting chairman of the Federal Communications Commission, is the youngest man ever appointed to the 7-man commission.

Denny was thirty-three years old when his nomination to the commission was confirmed by the Senate on March 26, 1945.

Denny joined the FCC in 1942 as assistant general counsel in charge of administration and litigation. In October of the same year, he was moved up to the post of general counsel.

Born in Baltimore in 1912, Denny was graduated from Amherst College in 1933 and from Harvard Law School in 1936.

From 1936 to 1938 he was associated with a Washington law firm. From 1938 to 1942 he was in the Justice Department's lands division.

An Episcopalian and a Democrat, Denny is the father of two daughters. His

term on the commission will expire June 30, 1951.

* * * *

By the lopsided score of 222 to 43 the House of Representatives on February 20th passed a bill avowedly aimed at James C. (for Caesar) Petrillo and his American Federation of Musicians. Inasmuch as the Senate several weeks ago had already passed a milder and more limited anti-Petrillo Bill, there was some chance that proponents of the measure could send it directly to conference between the two chambers of Congress.

The purpose of such strategy would be to by-pass the necessity for action by the Senate Committee on Labor and Education. This committee has steadfastly refused to report legislation which would interfere with, restrict, or discipline the activities of organized labor. In effect, the House-approved bill would amend the Communications Act of 1934 under which the FCC regulates radio broadcasting companies.

Coming on the heels of the recently passed Case strike control bill, the new measure has drawn union fire and has been termed "antilabor" by Representative Vito Marcantonio (American Labor, New York).

It would prohibit "certain coercive practices affecting radio broadcasting," and lists a group of practices which the House Interstate and Foreign Commerce Committee said include many demands made by Petrillo on behalf of his union.

"The broadcasting industry has been surrendering to these demands for tribute to avoid the greater losses that would result from failure to comply," the committee commented in a report approving the legislation. It added:

> The amount of money extorted from the broadcasting industry by these methods, without moral right, has reached millions of dollars in amount and if demands now pending were granted, it would, by these racketeering and extortion methods, require the broadcasting industry to pay tribute probably much in excess of $20,000,000 a year for peace against boycotts, strikes, and threats.

Introduced by Representative Lea (Democrat, California) the measure grew out of requirements for "stand-in" orchestras, for hiring what the committee said were unnecessary workers and, indirectly, out of the controversy between Petrillo's union and the national music camp at Interlochen, Michigan.

The bill would set a maximum penalty of one year imprisonment and a fine of $1,000 for coercing or attempting to coerce a radio station to:

> Employ any person or persons in excess of the number of employees wanted.
>
> To pay for services which are not to be performed.
>
> To refrain from broadcasting a noncommercial educational or cultural program for which participants receive only their actual expenses.
>
> To refrain from broadcasting any program originating outside the United States.

* * * *

A COMPLETE radio circuit printed in silver and carbon "inks" on a tiny sliver of ceramic plate was taken off the secret list on February 8th by Bureau of Standards scientists.

They said it made immediately practicable the pocket radio set, a desk set with reception equal to present-day receivers twenty times as large, and even miniature radars to detect obstructions ahead for the blind.

A skeleton set capable of being concealed in one palm was displayed. It incorporates miniature tubes developed for the secret proximity fuse which detonated American shells just the right damaging distance from World War II targets.

A more pretentious model, with station selector and a loud-speaker made from parts of a telephone receiver, took up about the space of a cigarette package. It worked.

Dr. Cledo Brunetti, of the Bureau of Standards, reported the process on February 8th before the Institute of Radio Engineers at Marquette University in

Milwaukee. It was developed under direction of Dr. Brunetti and Harry Diamond of the bureau, and Colonel C. H. Roberts of the Army Ordnance Department, in the Centralab Division of Globe Union, Inc., in Milwaukee.

The government scientists called the printed circuit both quicker and more uniform than hand-wired layouts, and said it would increase sturdiness and tremendously reduce costs.

The silver solution "ink" is applied to the ceramic plate, Dr. Brunetti explained, by means of a silk stencil with a design cut in it. That makes the leads for the current. With another stencil or mask cut in different design, the resistors are sprayed on in carbon solution.

The metallic silver solution in the form of the printed lines takes the place of the ordinary copper wires of the usual radio set. The carbon solution resistors reduce the flow of current to various parts of the set.

Condensers, paper thin, are attached and the job is done. For microwaves the coils too can be printed on, but so far they have to be separate for longer waves.

* * * *

THE recently settled strike of Western Union employees in New York city, following a work stoppage of five weeks, received generally critical comments in the New York city press with exception of the prolabor publications *PM* and the *Daily Worker*. The following excerpt from an editorial in *The New York Times* was fairly typical of the critical comments:

> The strikers seem to have gained nothing they could not have had by peaceful negotiation. Everybody lost. The strikers lost a million and a half dollars in wages. The company lost substantially in curtailed business. The public lost through interference with its communication system and because of repeated disturbances along a picket line which constantly threatened to break into general violence. . . .
>
> Both sides claim a victory. But there was no victory for anybody, unless the city is entitled to a sigh of relief. The work stoppage threatened for a time to develop into a rehearsal for a general strike, which was fortunately frowned down by the CIO national leadership. It ended at midnight, February 10th, just where it began. The War Labor Board terms were accepted by both sides, with only one doubtful clause to be interpreted by arbitration. The strike was ill-advised, foolishly conducted, and dangerous. It offered an almost perfect example of how not to proceed in a labor dispute.

* * * *

DEVELOPMENT of a nation-wide "radar-video" network, providing ground and relay facilities for aviation ground control in combination with similar facilities for television and other communications services, would require a capital outlay of $425,000,000 and possibly Federal aid, according to an engineering and financial analysis submitted to the industry by Dr. Milton G. White, professor of physics at Princeton University, and a leading authority on radar.

Dr. White, formerly head of the airborne radar division of the radiation laboratory at Massachusetts Institute of Technology and now engaged in nuclear research at Princeton, made this estimate in connection with a proposal that an integrated radar-communications network be undertaken in recognition of "the inevitable connection between radar traffic control and video communications."

The White study has proved of special interest to the industry, leaders in the field point out, since until now there have been no published estimates of the probable cost of microwave relay networks, whether designed for specific communications purposes or for such purposes in combination with ground control systems for aircraft.

If and when such a project is developed it would constitute one of the largest undertakings in the radar field, it is pointed out, and in any event it illustrates something of the size of the projects now being considered.

The industry finds added significance in the study in view of the fact that, despite the wide variety of experimental radio-relay projects now under way, it is considered not unlikely that one or more

firms engaged in these experiments will develop networks fulfilling the needs of both aviation and communications through a single, integrated system.

Dr. White assumes, as many others do, that a network combining the two services will be one of the earliest forms of common-carrier development, as the nation's defenses will require chains of radar stations to provide "early warning" signals on the approach of enemy aircraft, and in view of the economies to be realized in developing the aviation and communications services in combination with each other.

COPIES of the study have been made available to numerous high government officials, as well as to executives throughout the aviation communications and electronics industries, stressing that Federal aid and possibly Federal control will be necessary in developing the proposed network, as a result of its high cost and the need of meeting requirements of the military services and regulatory bodies in the fields of aviation and communications. Under the proposal, all cities of more than 100,000 population would be connected by 1,200 microwave relay units at a cost of about $100,000,000.

In addition, the plan provides for the expenditure of $25,000,000 for development and engineering; $20,000,000 for 200 traffic control radars; $30,000,000 for 400 blind-landing radars; $50,000,000 for 500 distributor relay units; and $200,000,000 for buildings, land, and financing, or a total of $425,000,000.

* * * *

ARMY experiments with radar signals to the moon are being continued to investigate the effect of the atmosphere and ionosphere on radar waves, according to Major General Harry C. Ingles, Chief Signal Officer of the Army.

In an interview in the Hotel Astor, New York, General Ingles pointed out that January's observations at Belmar, New Jersey, in which an "echo" was obtained from the surface of the moon, were limited by the type of antenna used. The Belmar antenna was fixed in elevation, aimed slightly above the horizon, so that the observers had to "hit" the moon just as it rose or just as it set.

Modifications are being made to produce an antenna that can follow the moon as it rises. Thus it will be possible to study the behavior of radar beams as they pass through various thicknesses of the atmosphere, since a beam aimed upward has far less air to traverse than a beam aimed out toward the horizon.

Likewise, as the radar equipment follows the moon toward the zenith, the rays will pass through the ionosphere at more and more acute angles. The ionosphere is a layer of ionized air that throws back toward the earth all but the highest-frequency radio waves.

General Ingles declared that when the experiments with the moon have been completed the Army planned no further investigations into outer space.

* * * *

TELEPHONE operating subsidiaries of International Telephone & Telegraph Corporation in seven Latin-American countries had a net gain of 27,433 telephones in service in 1945, reaching a year-end total of 859,938, the company reports. At December 31st there was a backlog of 166,000 unfilled applications for service in the Latin-American group.

Shanghai Telephone Company, IT&T unit which serves the International settlement of Shanghai, reported that about 91,000 of the 93,700 telephones which were in operation when the Japanese seized the system in December, 1941, are back in service. Shanghai Telephone was recovered by the Chinese Government Communication Administration and returned to IT&T control and management soon after the Japanese surrender.

Financial News and Comment

By OWEN ELY

The 1946 Outlook for Utility Earnings

FORECASTING is a hazardous business but it may be of interest to attempt a projection of earnings trends for the electric utility industry through the calendar year 1946. The latest current data are the "composite statement of sales, revenues, and income" for all privately owned class A and B electric utilities, issued by the Federal Power Commission on January 18th, reporting figures for the month of November and the twelve months ending November.

For the twelve months' period, net income showed a gain of 3.6 per cent over the previous year, but for the month of November there was a decline of 3.7 per cent. Obviously, since the twelve months' period included a substantial proportion of wartime economy, it is safer to use single month figures as a guide. Sales of electric energy in that month were down only 5.8 per cent, though sales to ultimate consumers were off 8.1 per cent and the weekly bulletins of the Edison Electric Institute showed an average decline close to 11 per cent. The trend in January and February has probably been slightly worse because of the steel strike.

Total electric operating revenues in November gained 1.1 per cent over the previous year, despite the fact that kilowatt-hour sales to industrial consumers were down about 17 per cent. Strike conditions appear likely to improve in the next few weeks (unless a railroad strike should occur), and 1946 revenues should probably about equal those of last year.

This is, of course, on the assumption that there are no severe nation-wide rate cuts. Commonwealth Edison has had recently a sharp cut, apparently roughly proportional to tax savings, and other utilities in Illinois will be affected later. Pacific Gas and Electric has been ordered to reduce natural gas rates about $3,500,000, but tax savings might amount to several times this figure. In Indiana the governor has asked the commission to reduce all utility rates by the amount of tax savings, but no definite action has yet been taken. Kansas City has asked the Missouri commission to reduce rates in line with tax savings.

MICHIGAN has not yet taken any action toward permanent rate reductions, although the Detroit administration forced large refunds to customers during the war on the ground that the companies would have to pay out six-sevenths of the amount in taxes in any event. There have been rumors that some other western states were considering the matter, but in general the commissions appear to be awaiting reports on the actual trend of earnings.

Based on data for the twelve months ended June 30, 1945, it is estimated that tax savings under the 1946 law might approximate $132,000,000 ($120,000,000 for electric operations only). This amount is equivalent to about 4 per cent of gross revenues and would be sufficient to offset a rate cut of around 7 per cent (after allowing for 38 per cent tax savings on the latter). If applied only to electric residential service, the reduction would be around 23 per cent.

But such a heavy rate reduction is highly unlikely. Assuming that voluntary rate reductions plus commission rate orders effected an average 7 per cent decline in residential rates and 3 per cent

in commercial service, and disregarding possible cuts in industrial electric and miscellaneous service rates, loss of revenue less tax savings would amount to about $53,000,000, some of which might be regained through increased business. This would leave a margin of about $80,000,000, as estimated above, to care for increased operating expenses.

This amount is hardly excessive. While some wages were doubtless adjusted in 1945, and there may be some saving from elimination of overtime, it appears likely that salaries and wages (which were up about 5 per cent in 1945 over 1944) might increase by another 10-15 per cent. A median figure of 12½ would mean increased costs of about $67,000,000, or $42,000,000 after tax savings.

Fuel costs are also likely to rise. While fuel expenditures in the twelve months ended November 30th were 4.6 per cent less than in the previous period and 12.9 per cent less in the month of November, this seems due to elimination of inefficient stand-by operations, plus excellent water supply conditions for hydro operations (with the exception of one or two spots, such as South Carolina). These favorable conditions may carry through during 1946 but it is unsafe to count too heavily on plentiful water supply. Moreover, there is always a time lag in the effects of rising coal costs; and it is probable that on April 1st John L. Lewis will again demand higher wages for the miners, resulting in a further rise in prices.

Utilities using fuel oil were favored by a sharp price decline during the latter half of 1945 but prices might tend to rise again in 1946, based on present indications. While the full effects of rising fuel costs may not be felt in 1946, it seems likely that there may be an eventual increase of as much as 10 per cent, particularly if drought conditions reappear in some sections. Such an increase would amount to $38,000,000, or about $24,000,000 net after tax savings.

Other operating expenses amounted to $534,000,000 in the year ended November 30th, up 5.3 per cent over the previous period. Because of rising steel prices and other factors, a gain of between 5 per cent and 10 per cent in 1946 would seem possible, which would work out in the neighborhood of $40,000,000 or $25,000,000 net after taxes.

On the other hand, there will be further savings in interest charges and preferred dividend requirements resulting from last fall's heavy refunding program. Interest charges in the month of November were nearly 10 per cent below the previous year, and for the twelve months ended November the decline was over 8 per cent. A saving of 10 per cent would amount to $21,000,000 in 1946 but some of this would be lost in taxes, reducing the net amount to around $12,000,000.

However, the saving in preferred stock refunding, which might be roughly gauged at around $5,000,000, would be a clear gain, bringing the total estimated saving to around $17,000,000. Deducting this from the increased costs of $91,000,000 would leave $74,000,000, which is dangerously close to the $80,000,000 net saving under the new tax program and the possible rate cuts.

Depreciation has not been mentioned in the above analysis. In the past two years depreciation has been running close to 10 per cent of gross revenues. Judging from the rapid increase in reserves this ratio may prove to be too high, after reserves have been accumulated to levels proportional to accrued straight-line depreciation on original cost (which should satisfy the more radical commissions). Eventually it may be possible to reduce depreciation charges somewhat, but this change does not appear likely in 1946.

One or two other items may deserve mention. The Federal Power Commission and Edison Electric Institute figures are based on electric operations only—gas, water, transit, etc., are lumped in "other utility operating income" (for electric companies having such services). In 1945 (to November) this income was down 7.6 per cent, and in the month of November 29 per cent. Miscellaneous

income, about equal in amount, showed much less change. There might be some further decline in earnings from these sources but the amount would not seriously affect our conclusions above. A third item, amortization of debt discount, premium, and expense, was about equally important in 1945 when it jumped nearly 65 per cent over the previous year. This increase of some $21,000,000 was due largely to heavy charge-offs of bond premiums, resulting in tax savings. When refunding operations decline to a more normal level, this item will automatically shrink. On the other hand, there may be some further gain in "other income deductions" because of the increasing tendency of the utilities to borrow from banks in connection with refunding operations.

Summarizing, the earnings outlook for the utilities in 1946 appears moderately favorable, assuming that regulatory commissions do not "beat the gun" and impose harsh rate cuts before complete data are available on the trend of net earnings.

Utility Analyses by Wall Street Firms

ARTHUR WIESENBERGER & Co. has issued a study on Central States Electric Corporation's debenture bonds. Both the 5s of 1948 and the 5½s of 1954 sell currently around 88 and are entitled in any liquidation to $1,200 and $1,236, respectively (including interest to December 31, 1945). Interest will, of course, continue to accrue until claims are satisfied. The company controls two other investment trusts—American Cities Power & Light and Blue Ridge Corporation. The approximate market value of the trio's assets around mid-January was $90,000,000, excluding intercompany holdings. North American Company and United Light & Railways' common stocks account for about one-third of total assets for the group, with two-thirds in diversified industrial issues. Because of the substantial rise in the market since Central States went into bankruptcy, bondholders' claims could be liquidated easily but one obstacle is Blue Ridge's prospective claim against Central States Electric, together with Central States' larger claims against directors and officers, etc. Until this litigation is cleared up, liquidation or reorganization appears unlikely.

Ira Haupt & Co. has prepared special studies on Pennsylvania Power & Light, North West Utilities Company, and New England Public Service Company. The study of New England Public Service appraises the assets at over $66,000,000, equivalent to nearly $7 a share on the common stock after allowance for par value and dividend arrears on the prior preferred and plain preferred stocks. This is based on a valuation of $40,000,000 for holdings of Central Maine Power, $19,200,000 for Public Service of New Hampshire, a little under $3,000,000 for Central Vermont Public Service, and $4,000,000 estimated cash.

IN its analysis of North West Utilities Company, the firm estimates the value of Wisconsin Power & Light common held by North West at about $21,000,000, which would be sufficient to pay off publicly held preferred stocks at par plus arrears and leave around $9,000,000-$10,000,000 for Middle West Corporation. This amount would be about 184 per cent of Middle West's reported costs of its holdings, on which basis the opinion is expressed that public holders of the preferred stocks (including the second preferred) might well expect full satisfaction of their claims. The study discusses several different ways in which the division of assets might be worked out between Middle West and public stockholders.

Bear, Stearns & Co. has prepared a memorandum on Utah Power & Light new common stock. The plan of reorganization approved by the SEC November 13th was ordered into effect (as of December 31, 1944) by the Federal District Court on January 16th. The 7 per cent preferred would receive 4 shares new common, and the 6 per cent 4⅓ shares of the new common (Electri

Power & Light receiving $650,000 cash for its small amount of 7 per cent preferred, and all old common). There will be 1,185,241 shares of new common outstanding, earning about $1.57 (as reported for the twelve months ended November 30th). An initial common dividend is anticipated at the rate of $1.20 per annum. The new common stock has been quoted recently around 22, returning a yield of 5.5 per cent based on the anticipated dividend.

BENDIX, LUITWEILER & Co. has prepared a study of Third Avenue Railway adjustment 5s, termed "An Adventure in Revitalization." The firm expects that Third Avenue's wartime peak revenues will be exceeded when motorization is accomplished, and that the recent election of directors will end the intercompany strife. Litigation for payment of full interest on the adjusted bonds, in years when earned, might benefit bondholders. Debt has been reduced about $15,000,000 and may be reduced perhaps $8,000,000 more by sale of surplus real estate. Depreciation and maintenance charges have been "heavily in excess of needs," it is thought. Not only should motorization increase revenues 10-15 per cent, but operating costs may be reduced in the same proportion. The pending plan for a special tax program to take care of the subway deficit should benefit Third Avenue Railway; the company might receive part of the tax proceeds, or (more likely) get a rise in fares if the subways do.

E. W. Clucas & Co. has issued a research department analysis of Electric Power & Light. At a price of 17 for United Gas, the preferred stocks could be retired at the equivalent of 100 and arrears, leaving over 1,000,000 shares of United Gas still available for the common shareholders. The company hopes to retain the profitable subsidiaries in Arkansas, Louisiana, and Mississippi, whose combined earnings in the twelve months ended November 30th were equivalent to $1.10 per share on Electric Power & Light common. (The amount appears likely to increase because of tax savings and possible refunding operations.) Capitalizing stated earnings at 15 times and adding the value of remaining United Gas and the parent company's net quick assets would make an estimated value for Electric Power & Light of $30 per share, according to this study.

The Stock Market Declines

THE stock market, sustained through a long period of labor troubles and lowered production by an inflation psychology, apparently regarded the elevation of Chester Bowles to supervise the new "price line" as unfavorable for the profit system, and, in recent trading sessions (to February 26th), the market has declined heavily. The standard market yardstick, the Dow-Jones industrial average, dropped from 205 to 185—probably the sharpest decline in one week since the military fall of France in 1940. The decline is somewhat reminiscent of that which occurred in 1937, when it was suddenly discovered that industrial activity and profits were on the wane, largely as the result of the administration's determination to "put on the brakes."

H. J. Nelson, "The Trader" in *Barron's*, remarked on Monday, February 25th: "Significant is the fact that there were no specific developments that could be adduced as the cause of the decline. Always disturbing to speculative sentiment is an unexpected price movement for which no ready explanation is at hand. . . . Saturated by months and months of special and secondary offerings and weakened by the frenzied uprush of three weeks ago, the market simply fell of its own weight. . . . Further ebbing of the inflationary psychology will follow and, as the weeks and months pass, a more realistic attitude toward corporate earnings, the life blood of the market, is certain to develop. Only mob sentiment and cheap money could have lately made possible a higher capitalization of profits than obtained at the height of the 1929 and 1937 markets."

Another writer in *Barron's*, A. A. Mol,

held that the business and earnings outlook does not support expectations of a boom and that the "approach of a temporary 'lull' in inflation strongly suggests the probability that the necessary intervening down trend will rate the title of bear market, a broad and time-consuming movement."

UNTIL the present decline has run its course, it will be difficult to appraise the action of the utilities in relation to the rest of the market. Thus far, however, the decline for all three major groups appears to have been rather uniform—unlike the January dip in the industrial group which was only moderately shared by the rails and utilities. However, so far as operating company stocks are concerned, it is obvious that the utilities have less to fear from increased wages and other costs than the average industrial company now squeezed between OPA ceilings and sharply higher wage and material costs.

More about House Heating

REFERRING to the item in this department on "House Heating by Electricity" in the January 31st issue, we have asked for comment from several executives interested in the subject. Philip Sporn, executive vice president of American Gas & Electric Service Corporation, replies: "I have very little comment to make on your ideas, it appearing to me that in the main what you say is sound. I do believe, however, that electric heating of homes has a much better future than is generally recognized, but that future will not come into realization until we have further development of the heat pump. We are concentrating our efforts in that direction."

Philip W. Swain, editor of *Power*, writes as follows: "One thing to remember is that the central station must burn at least four tons of coal to deliver to the home the heating equivalent of one ton of coal. At the very minimum, the central station must charge the householder for this four tons of coal, plus some part of the overhead and other costs involved in transmitting and delivering the coal's energy.

"When it comes to the heat pump, I am inclined to be somewhat more optimistic. With the heat pump, a ton of coal burned at the central station can deliver to the home almost the heat equivalent of a ton of coal. Moreover, the utility buys its coal at much lower price per ton. Of course, high investment required is a serious drawback to the heat pump setup. Nevertheless, I do expect that the heat pump will eventually become very important in industry and perhaps fairly so in home heating."

WITH reference to the point made by Mr. Swain in the first paragraph of his reply, the high cost of using electricity for furnace heating already had been pointed out in our analysis. However, it is very unlikely that electricity would be used in this way. The use of room heaters, each with separate thermostatic control, would be more economical in the average home, since unused rooms can be kept at a lower temperature —difficult to manage with central house heating. There may also be a slight increase in efficiency because of the combined use of radiation and convection, compared with only the latter for the conventional concealed radiator. However, it is difficult to gauge how far these savings might go toward offsetting the high basic cost.

The following comment by W. L. Sharp, rate engineer of Portland General Electric Company, was forwarded by President James H. Polhemus: "For the United States generally, it is probably true that the outlook for house heating entirely by electricity remains dubious, but the statement should be qualified to exclude certain favorable areas from the dubious class. Further along in the article something of the sort is intimated by a discussion of the possibility that electric house heating may be feasible where electric rates are low and the climate mild. By 'feasible,' Mr. Ely means, of course, economically feasible as the mechanical feasibility has long since been

proved and the convenience, cleanliness, and practically every other characteristic of electric house heating has been found to be superior to other methods of heating houses. In addition to Oregon and Washington, there are large numbers of homes heated entirely by electricity in California and in the area served by the Tennessee Valley Authority. It is believed, however, that from the standpoint of the electric serving agency, house heating experience in any given area is not necessarily an index of what may be expected in another area having a similar number of degree-days due to differences in the shape of temperature curves and habits of individuals in house heating.

"The term 'central house heating' appears to be used in the first part of the article to describe basic heating or house heating entirely by electricity. Technically, an electric central heating installation is one in which the conventional fuel-burning furnace is replaced by an electric furnace which heats by convection. This method of heating is employed by a minority of house heating customers on our lines and in 1944 there were only one or two such installations of a total of approximately 200 homes heated entirely by electricity. By far the most common method of electric house heating, not only in Oregon but also in the other above-mentioned areas, has heretofore been by installing thermostatically controlled unit resistance heaters in each room, which heat by . . . radiation and convection."

ELECTRIC-GAS HOLDING COMPANY STOCKS

	Where Traded	Price About	Share Earn. 12 Mos.†	Amt.	Price Earn. Ratio	Indic. Div. Rate	Yield About
American Gas & Electric	C	41	Nov.	$2.32	17.7	$1.90	4.6%
American Lt. & Traction	C	25	Sept.	1.56	16.1	1.20	4.8
American Power & Light	S	15	Sept.	1.36	11.0	...	...
American Water Works	S	23	Sept.	.70	33.0	...	...
Central & South West Util.	C	12	Sept.	.49	24.5	...	...
Cities Service Co.	C	27	Dec. '44	3.88	7.0	...	...
Columbia Gas & Electric	S	11	Sept.	.50	22.0	.20(c)	1.8
Commonwealth & Southern	S	4	Dec.	.17	23.6	...	...
Consol. Elec. & Gas pfd.	O	88	June	11.52	7.7	...	...
Electric Bond & Share	C	20	Dec.	D.59(a)	...	...	...
Electric Power & Light	S	20	Nov.	1.57	12.8	...	...
Engineers Public Service	S	33	Oct.	2.18	15.2	...	...
Federal Lt. & Traction	S	23	Sept.	1.42	16.2	1.25(c)	5.5
Illinois Power Co.	C	32	Sept.	1.82	17.6	...	...
Middle West Corp.	C	23	Sept.	1.10	21.0	.50	2.2
National Power & Light	S	10	Oct.	.67	15.0	...	...
Niagara Hudson Power	C	10	Sept.	.38	26.4	...	...
North American Co.	S	30	Sept.	1.73	17.4	(d)	...
Ogden Corp.	C	5	...	...	...	(e)	...
Philadelphia Co.	C	16	June	1.00	16.0	.55(c)	3.5
Public Service of N. J.	S	25	Sept.	.97	25.8	.80	3.2
Standard Gas & Elec. $7 pfd.	S	127	Sept.	10.90	11.7	...	...
United Corp. pfd.	S	50	Dec.	3.67(b)	13.7	2.00(c)	4.0
United Gas Improvement	S	25	Sept.	.63	39.7	.85(c)	3.4
United Lt. & Railways	C	27	Sept.	1.75	15.4	1.00	3.7
Averages					18.5		3.7%

D—Deficit.
(a) Parent company basis.
(b) Earned $1.49 nine months ended September 30, 1945.
(c) Payments irregular.
(d) Four per cent in Pacific Gas and Electric common stock, worth at recent market price $1.72.
(e) Liquidating dividend of $3 paid in 1945.
† Except where indicated, 1945.

What Others Think

FPC Hears Additional Views On Natural Gas

THE hearings of the Federal Power Commission, in its investigation of the natural gas industry—several of which have been held during recent months in midcontinent cities—were continued at Houston, Texas, on January 28th. (More recent hearings at Biloxi, Mississippi, and Chicago, will be reviewed subsequently.)

Governor Coke Stevenson of Texas, Olin D. Culberson, chairman, Texas Railroad Commission, with members of that body, together with other state officials, were present at the opening session. At the subsequent hearings testimony was offered by various state officials, gas and oil company executives, consulting geologists, and others.

At the beginning of the initial session, FPC Chairman Nelson Lee Smith, supervising commissioner for the investigation, said that certain interested groups have taken the position that particular cases, especially those involving major certificate applications, should be deferred until after the natural gas investigation has been completed. The natural gas companies, on the other hand, he said, sometimes pointing to actual or threatened emergencies, urged that such matters should go forward as expeditiously as possible. He stated:

> It should be evident, however, that the commission could not appropriately or lawfully adopt a policy of standing still over a period of months by failing or refusing to perform its plain duty under the Natural Gas Act. When the commission instituted the natural gas investigation it did not—as indeed it could not without disregarding its legislative mandate—suspend the operation of the Natural Gas Act for an indefinite period of time.
>
> The commission must, therefore, go forward actively with the administration of its specific duties under the act, at the same time pressing toward the completion of this investigation as rapidly as circumstances permit. Every effort will be made to accommodate the interested parties and to minimize such conflicts between the conduct of proceedings in particular cases and the hearings in G-580 as would make it difficult for the interested parties to give necessary attention to both.
>
> It may be well to point out, therefore, that conclusions which are reached in the light of the particular circumstances involved in such individual situations are, except as otherwise specifically stated, restricted to the facts adduced on the record in those cases. They do not afford a reliable basis for speculation or prediction as to the conclusions which may in the proper course be reached in the natural gas investigation. These will be arrived at only after all of the relevant facts and views have been fully presented and carefully evaluated in their appropriate setting. We are, as you know, still some considerable distance from the point.

FOLLOWING this preliminary statement by Chairman Smith, Governor Stevenson sounded the keynote of the Texans viewpoint in his warning that the Federal Power Commission must keep its hands off the production of oil and gas in Texas. He expressed a fear that nationalization of the gas industry might come about, indirectly, with "conscious obscurity" to hide such a move until accomplished. He said:

> It cannot be reasonably expected that we will quietly submit to Federal control over producing, gathering, and processing of this valuable state resource. We believe that in this field the rights of Texas are paramount and that the Federal government should abstain from any exercise of power therein. . . .
>
> Texas has no power to regulate interstate transmission of natural gas. You do not expect us, by the technique of "indirect methods," to interfere in such matters. Likewise we expect that you will not, by a similar process, extend your national transportation control into the rightful and lawful jurisdiction of the state.

WHAT OTHERS THINK

Chairman Culberson of the Texas commission recommended that Congress clarify the Natural Gas Act so as to specifically prevent the FPC from exerting any control over the production, gathering, or conservation of natural gas. He said:

> I believe that the Natural Gas Act should be interpreted, or clarified by amendment, if necessary, to conform to the original intention of the Congress, as I understand it, that the Federal Power Commission should not assert jurisdiction in the previously occupied field of state regulation.
>
> I sincerely hope that one of the recommendations that the Federal Power Commission will make as a result of these hearings will be to the effect that the Federal government should not interfere in any way with the production, conservation, or movement of gas within a state and that Federal regulation be limited strictly to those activities denominated in the Lea Bill as presently written. . . .
>
> I am certain that the answer to the critics of our policy is not to be found in any program which is designed to give to any Federal board or agency the jurisdiction or power, directly or indirectly, to control or regulate the production and gathering, the field price, the end use, or the intrastate movement or sale of natural gas.
>
> The business of producing oil and gas should not be given a utility status and made subject to the regulation and control of the Federal Power Commission or any other Federal agency. This is the road to nationalization of this industry; and I am unwilling to travel that highway because of the ultimate results that are certain to occur from a managed national economy. . . .
>
> No Federal agency could possibly act as effectively in this field as can the state agencies in the several producing states aided by the instrumentality of the Interstate Oil Compact Commission.

THEN, speaking of the methods employed by his commission, Chairman Culberson said:

> The (railroad) commission had not built up a large bureaucracy to tell oil and gas operators how to run their business. Instead, it has taken advantage of all their information in formulating the best rules for the prevention of waste and the protection of correlative rights in each field.
>
> Our present workable system, adapted to meet essentially local problems, should not be abandoned in favor of centralized Federal control which is certain to "bog down" in red tape and produce unfortunate results which would more than outweigh any possible benefits that might be derived from such a change.

ALSO, citing the inseparability of oil and gas in any regulatory policy, he said that the only ultimate outcome of Federal control over gas will be the complete domination of the oil and gas industry by the Federal government.

And, on the question of the exportation of Texas gas, he stated:

> Of course, the states do not have the power to and should not attempt to impose artificial and discriminatory restraints upon the flow of natural gas or any other commodity in interstate commerce. Such a course would inevitably lead to reprisals from sister states and the Federal government. This, however, is not to say that the several producing states do not already have the power to prevent production for wasteful or uneconomic use, as it is pointed out in the testimony of Honorable Reford Bond, member of the corporation commission of Oklahoma, who testified before this commission at its Oklahoma City hearing on October 9, 1945.

It was urged by Ernest O. Thompson, member of the Texas Railroad Commission, that natural gas be allowed to compete with coal in any market.

Rejecting the contention of coal and railroad interests that exportation of the Southwest's natural gas into coal areas should be prohibited, the railroad commissioner called for the "free play of competitive forces" between gas and other fuels.

The official objected strongly to "proposals for arbitrary and artificial regulation of gas use—the so-called end-use control theory," declaring that there is "no special or critical use for which gas must be reserved."

Mr. Thompson also denied the claim that so-called inferior uses of gas cause its economic waste and noted that the latter term has "frequently been distorted and twisted, fostering misunderstanding, to serve special ends."

The most superior use of gas, he defined, "is that which commands the best price where production is controlled so as to prevent physical waste and secure maximum recoveries."

CAUTIONING FPC against causing the devaluation of producing properties of gas operators and royalty owners by use of original lease costs in determining the basis for rates of return, this official said:

> Under the guise of regulating the interstate transportation of gas, the Federal Power Commission should not exploit Texas' gas fields by restricting delivery price of gas to a point that yields only 6½ per cent on the prediscovery cost of the fields. Depressing the price in one field that is owned by the transporter has a disastrous statewide tendency because the pipe-line market determines the price of gas.

Commenting upon the exportation of southwestern natural gas into areas where coal is available, Mr. Thompson said:

> Such agencies (as FPC) should not attempt to reach forward and regulate the local sale or distribution of gas, or reach backward and control either directly or indirectly the production, processing, gathering, compressing, or the price of gas prior to its sale for resale from the main transportation line of an interstate carrier. . . .
>
> It is obviously not in the public interest to limit the pipe-line markets by restricting industrial sales and otherwise attempting to control the "end use" of gas if the result is to be that for lack of an adequate market outlet at a decent price the gas will be burned in channel-type carbon black plants and put to other low-priced uses in the field. On the other hand, expansion of pipe-line markets means an increased demand with higher field prices and will make possible the utilization of large amounts of casinghead gas now being flared. Steps are now being taken to allocate part of the gas market to oil gas now being flared because of lack of present market.

In regulating the price for which gas is sold in interstate commerce for resale, this witness stated that the Federal Power Commission must recognize, "in case the natural gas company produces the gas or secures it from an affiliated or subsidiary company, the fair market value of the gas as a commodity, taking into consideration the going market price existing where the gas is produced and all other factors relating to the value of such gas as a commodity at the point of delivering into the interstate transportation line.

"In regard to the commodity value of gas produced by a natural gas company, which has been one of the major issues between the Federal Power Commission and the industry, I feel that the state now has adequate statutory authority to compel the ratable taking of gas in a common field, and that in the event a natural gas company purchases gas from other producers without discrimination in favor of its own production, in all fairness such company should be allowed the going free field price for its gas equal to that paid others."

ANOTHER of the Texas railroad commissioners, Beauford Jester, supported his fellow members in opposing an increase in the powers of the FPC or further extension of Federal authority over the oil and gas industry. On the question of regulating the end use of gas, Mr. Jester said:

> . . . It is again respectfully submitted that if a proper price is made possible for the natural gas of Texas and the other southwestern states producing gas, and gas is made comparable in price value to coal and other fuels used under boilers and other so-called inferior uses, economic factors and price would determine end use, and Federal regulation thereof would be unnecessary. . . .
>
> It is my opinion that in the proper regulation of interstate gas lines, it is fundamentally wrong not to recognize a fair market price for gas at the point where such gas is received by the interstate carrier. The welfare of the producer is equally as important as the customer's welfare. Texas is interested in the welfare of both.
>
> To the extent that the actual cost formula of the Federal Power Commission may contribute to the freezing of well-head prices of gas at their present subnormal and unjustifiable levels, we believe such order and formula unequitable and unjustifiable and should be immediately corrected.
>
> It might be observed, too, that any contribution made by the orders of the Federal Power Commission, designed and intended to bring about the cheapest price for the consumers in areas with large coal reserves close by, should be held responsible for the rising complaint of the coal industry to displacement of that fuel by low-cost, low-price natural gas.
>
> I firmly believe that, if left alone to economic forces, the price of coal and the price of gas will eventually fairly and justly settle on a reasonable competitive basis between

"I THINK THE REAL REASON THAT RURAL PHONE SALESMAN HAS BEEN DOING SO WELL IS THAT HE'S BEEN PROMISING THE FARMERS' WIVES A FREE PAIR OF NYLONS WITH EACH NEW SUBSCRIPTION"

these two fuels, for the welfare of all. I do know that an artificially maintained low price for natural gas can be justly pointed to as a cause for a prevalent fear and disturbance in the coal industry which, to some extent, views with alarm the competition of gas in certain areas.

The attorney general of Texas, Grover Sellers, and S. B. Spurrier, state geologist of New Mexico, joined the Texas officials in opposing Federal control over production, gathering, or conservation of natural gas.

At a later session, Chairman Culberson of the Texas Railroad Commission, recalled for cross-examination, told Tom McGrath, counsel for the coal and railroad interests, that FPC should not be allowed to determine end use because by determining end use it would determine the amount that goes into pipe lines and this would determine the amount produced, which is a state function. In answer to FPC Commissioner Richard Sachse, he said that if the FPC determines that it shall permit Texas gas to go out of the state, he did not feel that FPC should restrict the use to which the gas is to be put at the other end of the line. If there is to be any control of end use it should be by the state where the gas originates, he said, but he said it is rather an impractical matter to try to inject such control. Answering another of Mr. McGrath's questions, he said he believed that the Interior Department is

"eager to bring about a greater degree of Federal control."

Control of end use as a gas conservation measure was denounced as completely fallacious by Dr. E. DeGolyer, internationally known geologist and engineer.

He recommended the following program as "highly desirable if not essential in the public interest and to the future well-being of the producing branch of the natural gas industry": (1) ratable take in the individual field; (2) proration of markets between competitive fields; and (3) adequate well-head price for all marketed gas. He contended price should be the only regulator of end use.

The witness further told the Federal commission that as a result of low well-head price and inadequate drainage regulations, "plus the application of the restricted earning rule, applied by the Federal Power Commission to producing properties," the exploration and development phase of the natural gas industry today "is in jeopardy."

On the question of end use, Dr. DeGolyer said:

> There is *no* problem of end use or of conservation which will *not* be solved, and better solved than can be done by the best of regulations, if the producer can have adequate markets and decent price. Let us not worry about the end use of natural gas as long as we burn approximately a billion and a half feet a day in oil field flares.
>
> If through some tenuous argument you should conclude that control of end use is a conservation measure, let me assure you that it is *not*. As long as approximately a billion to a billion and a half feet of gas is being flared daily in the state of Texas, the attempt to conserve, through restrictions against the so-called inferior uses, fails miserably as an attempt at conservation. No use of gas can be inferior to its burning in an oil field flare, which indeed is no use at all.

This witness stated further, regarding the application of the restricted earning rule, as applied by the FPC to producing properties, that it has helped to place the exploration and development phase of the natural gas industry in jeopardy. He said:

> Your commission, through its ruling in the Canadian River Case, has effectively fixed the earnings of that company in the producing branch—the risk segment of the industry—at the public utility rate on prediscovery value. . . . Surely the paradox of gas produced from a well at a price of less than 2 cents per thousand cubic feet while that from an offset well may sell for a price of 3 to 5 cents per thousand cubic feet cannot endure forever.
>
> I respectfully submit to you that if one should want to kill or cripple the producing branch of the industry no simpler way could be found than to restrict the well-head price of gas over the entire gas-producing regions to a public utility rate upon the prediscovery value of producing properties.

The testimony of Dr. L. A. Woods, state superintendent of public instruction in Texas, brought to these hearings a new and unique phase of the situation with respect to regulation of natural gas affairs. He said:

> I am opposed to any step which, in my opinion, will lead to federalization of our most important state industry with whose prosperity is linked the welfare of our state's educational system.
>
> I fear that a federalized oil and gas industry will substantially lessen the value of these great natural resources of Texas and thus weaken the financial support of our entire educational system. Under such conditions there would be a strong temptation to accept Federal support, which, in turn, might lead to Federal control of education in Texas. If the Federal government pays the state's educational bills, it will call education's tune in Texas. This, history teaches us, would be detrimental to our national welfare.
>
> I want no Federal bureaucracy controlling, directly or indirectly, the education of our youth; and we vigorously oppose any program which tends toward that direction. Federalization of industry inevitably tends toward national regimentation of our social and educational systems.
>
> From the standpoint of the school interests in Texas, I am opposed to Federal control which will or may interfere with our state school revenue.

George A. Hill, Jr., president of Houston Oil Company, vigorously attacked FPC's proposal to control the uses to which natural gas is put. He defended the soundness of the present methods of determining the "end use" for natural gas and condemned the commission's efforts to exercise this control as a definite step in what he termed the "long and per-

sistent campaign of government bureaus to substitute Federal control for that of the states in the administration of energy resources."

He noted how the FPC in its report of 1940 indicated that it was even then considering control and jurisdiction over gas conservation, and said that a translation of the report meant that it proposed to reduce competition and, in effect, to create a monopoly for existing energy resources (such as coal) against competition from natural gas.

Mr. Hill asserted that the commission "bases its contention on the premise that the individual states and private industry are incapable of mature judgment in the administration of natural resources and delegates to itself the authority to determine what is wise use of them.

"The sinister significance behind this contention is that . . . it assumes . . . that government control is superior to private management; that Federal regulation is superior to state regulation; and that individual human probity, capacity, energy, and fidelity rise to new heights of efficiency when engaged in Federal government employ. And all this with apparent disregard for the fact that technology, as developed under private American industry, has become the greatest multiplier of natural resources in world history."

RELATIVE to the FPC proposal to exercise control over end use of natural gas, Mr. Hill pointed out the ultimate impact upon all other resources as well, provided it should become law. He said:

> . . . the fate of natural gas will be the fate of all other resources as well. Since the production of natural gas is integrally connected with the production of petroleum, it is inconceivable that one can be regulated without the other. And certainly if the commission decides that natural gas must be utilized only for "a superior use," such as heating a kitchen range, and not for "an inferior use," such as powering a gigantic industry, then it must also designate the alternate energy resource to be used instead of natural gas and in so doing will ultimately control all other sources of energy such as petroleum, coal, water power, etc. It is obvious even to the unpracticed eye that under the guise of end use of natural gas the Federal Power Commission is merely placing an entering wedge in its campaign to gain complete jurisdiction over the nation's power resources.

When some of the commissioners protested that Mr. Hill was unjustly attempting to say what their views are, particularly on the matter of end use, Charles I. Francis, counsel for the Texas governor's natural gas committee, asserted that while the Texas people do not know the views of the individual commissioners, Mr. Hill's testimony is designed to strike at the group which is seeking to set up a program to which the Texas group objects. He pointed out that Chairman Leland Olds of the FPC was a member of the Natural Resources Committee which filed the report proposing Federal control over all fuels and that "we are proceeding on the broad general grounds that we must oppose the forces seeking to bring about" any such program. He cited the commission's decision in the Boone, Iowa, case to show what he said was a direction in which the commission appears to be going on the end-use question.

When Mr. Hill asserted that the Federal Power Commission "is seeking the new comprehensive and authoritarian powers conferred" by the legislation, Commissioner Harrington Wimberly contended that Mr. Hill was entirely without justification in making such comment. The commissioner said that as far as his knowledge goes, and that he thought he was in a position to know, the charge made by Mr. Hill was groundless. Mr. Hill said he hoped that all the commissioners feel the same way, but that his conclusions are based on FPC reports and documents, and that he hopes he is wrong.

THERE was presented at one of these FPC hearings a paper by George Fancher, professor of petroleum engineering, University of Texas, prepared jointly by himself and Harold Vance, head of the petroleum engineering department of Texas A&M College. This paper stated in part:

> It would seem to the public that natural

gas is no problem child, so unique and different from all other natural resources, that it must be singled out for special observation and treatment. The public interest indicates that the sound principle of conservation, being developed by the state of Texas in the administration of her natural resources, will serve adequately for her to continue handling natural gas unassisted and unhampered by any additional Federal regulations.

While gas has been produced in ever-increasing amounts each year, the reserve is being depleted conservatively.

There are those who contend that our natural gas should be used as bait to induce and encourage new industries to come to Texas, but it takes more than cheap fuel to encourage new industries. New industries have come to Texas, and more will continue to come in the future, but they will and should come only when the economic advantage is sufficient to pay them to come. Laws and regulations restricting the export of natural gas cannot force new industries to Texas.

Consequently, it is difficult to answer categorically, from the standpoint of the public, whether natural gas should be exported increasingly or whether export should be restricted. Under the Constitution of the state of Texas, the legislature of the state has ample power to protect the economic welfare of our people so far as the use of our natural resources is concerned. No need for Federal action in this field is required. Likewise, the price paid for gas in the field and by the consumer can greatly affect the change in the amount exported. With all phases of the problem in mind, a balanced program for control of the industry by the state and development of its interests would seem appropriate. It seems unlikely and unwise to the authors for any major portion of the industry of the Boston-Birmingham-Milwaukee triangle to move away from the coal, iron, water, and rail transportation, labor and factories located there, just to be near only thirty-odd years of known gas reserves. Likewise, the keeping of natural gas in Texas merely to bait industry is fantastic.

Charles I. Francis, counsel for the Texas governor's natural gas committee, offered the suggestion to the FPC members that they issue a regulation setting up standards under and setting out definitions of what it interprets the words "public convenience and necessity" in the Natural Gas Act to mean. He stated there is obvious confusion on this point and that it would be helpful to all parties, in his opinion, if the FPC would issue such regulation. Discussing this with Commissioner Sachse, he also suggested that, should such proposed regulation be taken to the courts, the entire issue could then be settled.

In discussing the land and royalty viewpoint, R. C. Kay, president of Panhandle Producers Royalty Owners Association, said:

> It is only under the American system of free enterprise and competition that wildcatting has flourished. The rewards should be commensurate, and necessarily must be, if unsubsidized independent exploration and development are to continue. The land and royalty owner takes this into consideration in granting the lease. It should receive the same consideration from all regulatory rate and price-fixing agencies.
>
> The land and royalty owner wants his property rights respected and protected and doesn't want his gas confiscated nor the value thereof minimized, directly or indirectly, by any Federal or state regulation or any far-fetched interpretation of same, for the purpose of providing a slightly lower price to some distant consumer who has no interest or investment in his land or his gas. Congress never told any bureau to take from one and give to another and if any such interpretation has or can be placed on its act, Congress should amend or repeal the act so distorted. Such natural desire on the part of the royalty owner does not greatly work against the interest of the ultimate consumer since the price of gas at the wellhead is only a relatively small percentage of the consumer's delivered price. It is certainly unfair to the royalty owner to take his gas at a price less than its fair market value.
>
> He wants, and will continue to contend for, a fair price for his property commensurate with its competitive value for the uses for which it is suitable. He wants expanding markets with a fair price—he wants no restrictions on these markets other than limitations naturally arising from bona fide competition, and he wants his lessee to have a fair and reasonable opportunity to market gas ratably with his neighbors. The land and royalty owner in Texas believes these things can be accomplished under state laws and rules, and regulations of the state's administrative agencies, and that Federal agencies should not attempt or be allowed to encroach upon the inherent right of the state in regulating such matters.

In his testimony, H. P. Kucera, city attorney of Dallas, Texas, expressed the opinion that the stake of consumers in their sources of natural gas supply is so vital that any extension of Federal reg-

WHAT OTHERS THINK

"I'M SORRY LADY BUT UNDER THE LAW OUR COMMISSION HAS NO JURISDICTION OVER TAXI DANCING"

ulation in the gas production field would be of doubtful benefit to the consumer or the gas company. He said further that

> To restrict the production below what is required by pipe-line markets and sound conservation practices would so depress the value of gas in the field that it would not only be extremely difficult to induce independent operators to assume the risks and pay the costs that would be involved in exploration and discovery, but it would also be equally difficult to prevent the waste of gas already discovered. A large part of the casinghead gas is produced in limited amounts from individual wells with large volumes in the aggregate. This gas, with its relatively high gathering and compressing costs and uniform rate of production, would never have been made available for pipe-line deliveries had such a policy with respect to utilization been in effect during the past two decades.

Gas service has been brought to remote communities and many of them are enjoying a better service than can be had in some of the great cities "solely because the suggested elimination of industrial sales was not in effect at the time service was extended to these communities." Many of these localities, he pointed out, have natural gas service now only because of the fact that main pressure lines have been built through these localities to pipe the gas to larger cities. "The needed capital," he concluded, "to serve these smaller localities for domestic uses would not have been forthcoming and such an investment would not have been justified when considered in the light of the prospective revenues from these small household users. The great

expansion of the natural gas business in the last twenty years could not have been accomplished had it not been for the availability of large industrial base loads."

OPPOSITION was expressed by M. L. Mayfield, technical adviser, natural gas and natural gasoline committee, District 3, PAW, to any policy which is designed to give a utility status to the operation of natural gasoline plants. Administration of the Natural Gas Act, he said, should be clearly and rigorously limited solely to the interstate phase of operations, and there should be *no* tendency to augment or extend jurisdiction, directly or indirectly, over auxiliary operations.

He related that the operation of natural gasoline plants has been a corollary to oil production, and contended that "as a conservation measure it is preëminent." He added that

> In connection with pipe-line usage of casinghead residue, it is becoming increasingly apparent that certain inferences and apprehension toward administration of the broad provisions of the present Natural Gas Act are acting as partial deterrents to the rôle of private enterprise. This is particularly significant where residue gas sales to interstate transmission lines are being considered. Therefore, the administration of this act should be clearly and rigorously limited solely to the interstate phase of operations. There should be no tendency to augment or extend jurisdiction, directly or indirectly, over such auxiliary operations as natural gasoline plant processing, compressing, or gas gathering of casinghead gas, even though such casinghead gas may eventually be sold to interstate pipe lines or markets.
>
> Similarly, the state should not interfere with interstate commerce so that benefits of free movement and commerce between all states may continue to be instrumental in promoting the necessary private enterprise so essential to the further development of the natural gasoline industry and the resources incident thereto.

In the testimony of D. A. Hulcy, president, Lone Star Gas Company, Dallas, it was brought out that "infant mortality" might have been the fate of the natural gas business in Texas had public regulation handicapped prompt decision of the pioneers, and that today managerial discretion is "the quickening spirit of the enterprise." He said further:

> Grave risks had to be assumed and unforeseeable contingencies met with prompt decision and vigorous action by men qualified by training and experience to appraise the risks and to solve the problems that the nature of the enterprise continually presented. These operators of the natural gas industry in Texas had a dual responsibility. They were responsible to the investors who had risked large sums in hazardous ventures and to the public, which had become dependent upon a continuous and ample supply of natural gas for their health and bodily comfort. A failure by management to have measured up to its dual responsibility would have resulted in financial disaster and a collapse of service which would have had repercussions in every phase of the public welfare of Texas.

ROBERT T. WILSON, president, The La Gloria Corporation, declared that the control of the production of natural gas constitutes control of production of oil. He said:

> We find the cycling operation as handmaiden to oil production, handling casinghead gas at low pressures in a portion of the plant, coincidentally processing the gas from the gas cap. The process now becomes tied inseparably to oil production. Control of the production of oil becomes control of the production of gas. Control of the production of gas is control of the production of oil. Today, both are in the hands of our state railroad commission and the industry fears and opposes any effort to make it otherwise.
>
> We are fearful that a sale of residue gas at the gate of our cycling plants may subject us to Federal regulation, that the opening of one valve may put us into the utility business. We are in the hazardous business of exploration and production of gas and the manufacture of liquid products therefrom. Ground rules suitable for the transmission and retail distribution of gas do not properly apply to us.

Testimony upon the subject of carbon black was submitted by E. M. Eckhart, vice president, and Ira Williams, director of research, The J. M. Huber Corporation, who stated that the manufacture of this product has been a conservation measure. Mr. Eckhart said that

> fifteen pounds of carbon black will give a set of synthetic passenger tires 20,000 satisfactory miles; it takes 7,500 cubic feet of gas to produce 15 pounds of channel black;

it will require about 1,000 gallons of gasoline to wear out these tires, and that 30 cents worth of gas thus converted into 75 cents worth of carbon black will move a car safely as far as $200 worth of gasoline.

L. T. Potter, superintendent of production, Lone Star Gas Company, in his testimony discussed conservation. He said:

> Notable advances in the conservation of the production from gas wells have been made in the past which now are taken for granted without a general realization of the magnitude and value of such advances.
>
> The progress which has been made toward achieving ratable production from gas wells is of significant importance in regard to conservation.
>
> As an over-all proposition, the production of gas in the state of Texas is carried on in a reasonably healthy manner. A combination of informed regulation and of conscientious effort on the part of operators has resulted in the use for beneficial purposes of practically all of the gas produced from gas wells. The same two factors have laid the groundwork and have accomplished substantial progress toward the maximum possible utilization of all gas produced in Texas.

N. C. McGowen, president, United Gas Pipe Line Company, Shreveport, Louisiana, said that the load factor on the United system is about 66 or 67 per cent. He said that industrial sales, which are substantial, make possible the reasonable rate for the domestic sales, pointing out that his company purchases gas at an average price of 3.4 cents and sells it for an average of 10.3 cents in Texas. To support his assertion that "direct sales have constituted the best regulatory body there is," Mr. McGowen said he meant that since direct sales are not under any regulation he has found that competition with other gas companies has provided all the regulation that anyone would want.

He disagreed with Burton Behling, chief of the FPC investigating staff, who sought to contend that the FPC should consider end use before approving rates. Mr. McGowen said that FPC has no jurisdiction over end use and should not be given that authority. He further told Mr. Behling that he feels that the FPC, now that the war is over, should act in accordance with the provisions of the amendments made to the Natural Gas Act in 1942 and determine service areas for the interstate pipe-line companies.

Mr. McGowen added that the piping of natural gas to areas where it would not otherwise be available has benefited "our whole economy" by enabling the manufacture of better things at lower cost.

He said technological progress in the discovery, development, and conservation of natural gas reserves, and in the construction and operation of natural gas pipe lines with their many sources of supply, had put to an end the days when a community lost its essential supply of natural gas because of the exhaustion of local natural gas fields. McGowen concluded:

> The American public demands a free choice of everything it uses. It will not like being told it cannot use natural gas because it lives in a coal-producing area. It likely sees, in the future development of atomic energy, powerful sources of energy which may eventually result in the obsolescence of natural gas as a fuel. In the years that intervene before new sources of energy are developed, we should be untrammeled in the use of our resources so that our research can produce better things for our future generations out of the resources that will be available then.

On the subject of casinghead gas, Stuart E. Buckley, head of production research, Humble Oil & Refining Company, said that it is strictly a by-product of crude oil, and that any attempt to regulate its production separately from the production of crude oil would result in confusion. He told the FPC that engineering studies of oil field operations have shown that the primary use for casinghead gas is in effecting oil recovery from underground reservoirs and that production of this gas is not a wasteful process but is a necessary part of oil production. "The conservation of casinghead gas," he declared, "must be considered separately from its final disposition. . . . While casinghead gas does have other uses, no demand other than that of efficient oil production can be used as a criterion for casinghead gas conserva-

tion. Any attempt to produce casinghead gas in accordance with a dual standard of unequal and conflicting demands would inevitably result in either disruption of crude oil production or underground waste of oil."

RECALLED for cross-examination, Robert T. Wilson, president, The La-Gloria Corporation, said that operators such as himself fear they may be classed as a part of a delivery system and therefore as a utility. They also fear, he said, that by commingling into a gas stream they may be brought into such a classification. While this class of operators, in Mr. Wilson's opinion, does not believe that the present membership of the FPC would attempt to so classify this type of operators, he said that they cannot be sure about the future and that the rewards of these operations are so low they fear to run the risk of being subjected to utility regulation. This fear is as real as the actuality when it comes to determining whether or not to undertake a project, he added. He also said that if the production is from a gas cap where there is oil, such producers fear that their oil operations might, in effect, be subject to regulation which would restrict their rate of return to 6½ per cent.

Dr. Richard J. Gonzalez, economist, Humble Oil & Refining Company, stated that higher gas prices should be paid to producers in order to encourage greater conservation of natural gas produced with oil. He said that gas conservation is a matter of economics as well as engineering, and that adequate gas prices are required to provide an incentive for producers to save and market gas produced with oil and to explore for and develop gas reserves.

He said that present prices are too low at the well, particularly in Texas, Louisiana, and Oklahoma, which have about two-thirds of the known gas reserves in the United States. His testimony brought out that gas sells at the well in Texas for only about 2.5 cents a thousand cubic feet and seldom more than 5 cents, so that the revenue obtainable by selling gas from the average oil well is only about 60 cents a day. He added:

> This is inadequate to cover the expense of gathering and compressing gas in many small fields and certainly does not offer much incentive to making the necessary initial investment for gas conservation. As gas prices improve, it will become economically feasible to conserve and utilize fully an increasing proportion of the gas produced with oil. . . .
>
> Gas is such a convenient fuel that it should bring a price in the field much more nearly comparable with that of crude oil, with due consideration to the relative transportation costs into competitive markets. Even at a price of 5 cents to 10 cents a thousand cubic feet at the well in Texas, gas could still be delivered to more important consuming areas of the midcontinent and the Atlantic coast at costs competitive with fuel oil and coal. . . . The average price paid for gas at the well is only about 18 per cent of the delivered cost to domestic, commercial, and industrial consumers. An increase of 1 cent per MCF at the well, which would be 40 per cent of the 1944 price in Texas, would mean less than 3 per cent higher cost if passed directly on to these users. The wholesale price of gas has been reduced substantially in recent years while the price of coal has increased about 25 per cent. These divergent trends have created an economic incentive for industry to use gas instead of coal.
>
> The simple and sure way of encouraging gas conservation and use for the most valuable purposes, without a maze of arbitrary controls, is through higher prices which will retard and even reverse the substitution of gas for coal. . . . There is no occasion for control of gas prices at the well by any government agency, either state or Federal. Such control can only lead to disturbance in the use of the numerous competitive fuels available to all consumers.

IN closing, Dr. Gonzalez made the pertinent observation that the consumer of natural gas is interested not only in the present price but in the continuity of supply of this convenient fuel over a long period of years. He said:

> A policy which looks only to the immediate reduction that can be made in gas prices may well sacrifice the long-term interest. Low gas prices will discourage conservation in the field, will artificially stimulate the use of gas in place of other fuels, and will discourage the discovery of new gas reserves.
>
> All of these results are bad from the national viewpoint. Substantially higher gas

prices in the field, which would add only a relatively small amount to consumers' bills, will contribute effectively to genuine conservation and to adequate supplies of gas for a long period of time at reasonable prices.

Upon the closing of the Houston hearing, FPC had scheduled its next hearing at Biloxi, Mississippi, on February 11th, to be followed by sessions in Chicago, to begin February 19th.

Types of Farm Ownership and Rural Electrification

A REPORT on the "Means of Promoting Economically and Socially Desirable Types of Farm Ownership and Operation in the United States" has been issued as one of eleven studies sponsored by the Potomac Grange No. 1 of the District of Columbia. The purpose of these studies, it is stated, is "to make the services of specialists in various technical fields related to agriculture available to the men and women who make up the delegate body of the National Grange."

Specialists from various divisions of the U. S. Department of Agriculture, the Bureau of Reclamation, the Office of Education, and the OPA were the members of the committee making these studies. The report is lengthy, and, among the many farm subjects treated, has this to say about rural electrification:

"Nearly one-half of America's farms are now electrified. Most of this rapid progress has occurred within recent years. Electricity makes all the conveniences and facilities of the city available to rural homes, as well as being a source of cheap power for performing many of the most tedious and labor-consuming chores—such as hand milking on our dairy farms. In addition it provides cheap power for carrying on more processing operations on the farms, and has caused the development of many rural industries.

"Quick freezing and storage of farm products should be given special mention. Development of family-size 'farm freezers' will be one of the outstanding developments of the postwar period. Not only will it affect family living and home consumption of farm products but it may add still more industries which may be carried on in rural areas, in the packing, freezing, storage, and shipment of an extensive variety of food products.

"Mechanization in the fields, in the home, on the farmstead, and in transportation has changed and is changing the basic procedures of farming. Recent progress has been rapid. The number of farms having electricity has more than doubled since 1930."

Electric power company executives who are interested in the bearing of the economic phases of agriculture upon the extension of rural electrification should find instructive information in this report.

The Need for Profits

"IT has become somewhat unfashionable to speak of making profits, as if it were an un-American notion. But only out of profits can any established business get the funds for research for better things and better ways of doing things. Only out of profits can come the capital for new tools, new plants, new techniques in production. Only out of profits can come higher wages, improved working conditions, and new opportunities for employees."

—HENRY FORD, II,
President, Ford Motor Company.

The March of Events

Files Application with FPC

THE Mid-Continent Gas Transmission Company, Wilmington, Delaware, has filed with the Federal Power Commission an application for authority to construct and operate a 400-mile, 26-inch main transmission pipe line from the Hugoton gas field beginning near Liberal, Kansas, and extending to the city limits of Kansas City, Missouri, with construction to be completed by November, 1946. The initial cost of the proposed line, including gathering lines, field compressor units, and auxiliary equipment, is estimated at $25,620,000. The company plans to finance the project through the sale of $15,000,000 of first mortgage 3¼ per cent bonds, $6,000,000 of 4 per cent serial notes or debentures, and the balance through the sale of common stock.

According to the application, Mid-Continent is negotiating with the producers in the Hugoton field for purchase contracts to enable it to supply natural gas at wholesale to gas distributing companies and industrial customers doing business in and around Kansas City, Missouri, and Kansas City and Wichita, Kansas. Three gas distributing companies, Kansas City Gas Company, the Wyandotte County Gas Company, and the Gas Service Company, all affiliates of Cities Service Gas Company, now serve the area, purchasing about 97 per cent of their requirements from Cities Service.

In addition to Kansas City, Missouri, and Kansas City and Wichita, Kansas, the three distributing companies serve gas to North Kansas City, Missouri, and 159 communities in eastern Kansas, southwestern Missouri, northeastern Oklahoma, and southeastern Nebraska.

The application further stated that the public interest would be best served by the denial of Cities Service Gas Company's request for a certificate of public convenience and necessity to enlarge its present facilities and the granting of a certificate of public convenience and necessity for the construction and operation of the proposed natural gas transmission pipe line by Mid-Continent.

Prepared to Fight CVA

"VARIED interests in the Northwest opposed to creation of a Columbia Valley Authority are prepared to make a convincing showing in Congress whenever the Mitchell Bill comes up for hearing," Fred Wolf of Newport, Washington, a director of the Pacific Northwest Development Association, told the Spokane construction council recently at its luncheon at the Spokane hotel. (See, also, page 356.)

Wolf said the association's purpose is to aid in advancing the orderly and full development of the natural resources of the Columbia river basin. Maintaining that an excellent record in utilizing these resources has already been made by individuals, groups, and organizations of the Northwest in coöperation with local, state, and Federal government agencies, he said this method of development should be continued.

Terming CVA both autocratic and socialistic, Wolf said that under it the Northwest would be controlled by three men who might be only nominally residents of the region and not familiar with its needs. Interests behind TVA tried to bring about adoption of the Missouri Valley Authority and are now concentrating their efforts here, Wolf declared.

Describing Spokane as the center of "public power politics" activity, Charles Hebberd, Spokane, recently appointed director of the association, said that a strong unit is being organized in Spokane to prevent the Columbia valley from coming under control of the CVA type.

Pipe-line Application Filed

AN application was recently received by the Federal Power Commission from the Cincinnati Gas Transportation Company, Charleston, West Virginia, requesting permission to construct and operate an additional pipe line in Kentucky to enable it to augment the capacity of existing facilities for delivery of natural gas to meet increased demands of its present customers, the Cincinnati Gas & Electric Company and the Union Light, Heat & Power Company. The cost of the proposed undertaking, which is to be completed by November 1, 1946, is estimated at $1,500,000.

The application states that the proposed 14-inch, 70-mile pipe line will extend from Cincinnati Gas Transportation Company's 20-inch pipe line near Foster, Kentucky, to an interconnection with the 24-inch pipe line of Tennessee Gas & Transmission Company near Means, Kentucky, and will be used only to serve present customers.

According to the application, the completed

pipe line will afford Cincinnati Gas Transportation Company an additional 50,000 MCF of natural gas per day for delivery to Cincinnati Gas & Electric and Union Light. The gas is to be supplied by Tennessee Gas & Transmission Company for the account of United Fuel Gas Company.

Cincinnati Gas Transportation Company is an affiliate of Columbia Gas & Electric Corporation, and in addition to the customers named serves gas at wholesale to the Bracken County Gas Company and the Kentucky Utilities Company.

SEC Defers Action

WHILE approving the over-all objectives of the Washington Railway & Electric Company's reorganization plan, the Securities and Exchange Commission last month announced, in an interim opinion, that it could not pass final judgment because Congress and the District of Columbia Public Utilities Commission had not acted on certain problems posed by the plan.

"These problems," the ruling commented, "cannot definitely be resolved until such time as the proposed plan is in a position to be consummated. However, we feel that to the extent that provisions of the present plan may be unacceptable, other means of accomplishing the objectives of the plan are readily available."

In brief, the plan provides for purchase by the Potomac Electric Power Company, a subsidiary, of Washington Railway's interest in the Braddock Light & Power Company, the exchange of new common and preferred stocks of Potomac and capital stock of the Capital Transit Company, another subsidiary of Washington Railway, for the outstanding preferred and common stocks of the last named company, and the dissolution of Washington Railway and two of its subsidiaries—the Washington & Rockville Company and Great Falls Power Company.

These objectives, the commission concluded, are desirable under the policy expressed in the Holding Company Act and are a step toward compliance with an SEC order entered on April 14, 1942, in connection with § 11(b)(1) proceedings with respect to Washington Railway's parent, the North American Company, and its subsidiaries.

Congress must enact legislation, the ruling pointed out, to remove certain restrictions in the present applicable laws of the District of Columbia to permit some of the transactions proposed in the plan, and Washington Railway specifically made consummation of the program dependent thereon.

Reject Utility Control

SWISS voters overwhelmingly rejected a government-sponsored constitutional amendment which would have provided for regulation of commercial rail, water, road, and air traffic by the Federal Council (Cabinet), complete returns from two days of balloting showed recently.

Arkansas

Court Upholds Power Firm

THE state supreme court on February 11th held that foreign corporations doing business in Arkansas are not liable for income taxes on dividends received from stock such corporations might own in non-Arkansas corporations, which do no business in the state.

The opinion affirmed a Pulaski County Chancery Court decree ordering State Revenue Commissioner Otho A. Cook to return to the Arkansas-Missouri Power Corporation of Blytheville, a Delaware corporation, $3,337.98 in income taxes it paid under protest.

The legislature's failure expressly to tax foreign corporations operating in Arkansas in such cases "amounted to a legislative declaration that where such dividends come from stock in corporations not obtaining more than 50 per cent of their gross receipts from within Arkansas, such dividends were not to be taxed as income of the described corporations," the supreme court said.

The high court found the income of the Arkansas-Missouri Power Corporation, sought to be taxed by the revenue department in this case, was derived from stock in the East Missouri Power Company, a Missouri corporation which operates entirely within that state and derives no revenue in Arkansas.

California

District Fights Sale

THE People's Utility District of Union county, Oregon, is fighting the proposed sale of Eastern Oregon Light & Power Company to California Pacific Utilities Company, it was reported recently.

The district has requested a state public

utility commission hearing on the sale, stating that despite its offers to negotiate purchase of the Eastern Oregon properties at a price between $2,200,000 and $2,500,000, the company had agreed to sell to California Pacific at a comparable price without notifying the utility district.

The district said it intends to construct an electric system if it fails to acquire the Eastern Oregon facilities.

California Pacific amended its application to the California Railroad Commission, saying the total consideration in the proposed sale will be $2,277,395, including assumption of $1,800,000 principal amount of Eastern Oregon 3½ per cent bonds.

Water Ruling Given

ATTORNEY General Robert W. Kenny's office last month announced an opinion that the Metropolitan Water District could legally provide surplus water to San Diego county without the county becoming a member of the district.

Kenny's ruling concurs with a previous opinion by the legislative counsel, Fred B. Wood. The attorney general's office also concurred in an opinion by Wood that the Federal government has the power to acquire water, by condemnation if necessary, from the Metropolitan Water District for use by Federal facilities in San Diego county.

Illinois

Rate Reduction Ordered

THE Illinois Commerce Commission last month ordered an immediate reduction, totaling almost $6,000,000 yearly, in rates charged by the Commonwealth Edison Company and other public utilities serving Chicago and northern Illinois. John D. Biggs, chairman of the commission, announced that the reduction affected both residential and commercial users. He indicated that he expects to announce rate reductions for other Illinois utilities in the near future.

The companies affected by the recent order and estimated yearly rate savings to their customers are Commonwealth Edison Company, $3,440,000; Public Service Company of Northern Illinois, $1,838,000; Western United Gas & Electric Company, $261,000; and Illinois Northern Utilities Company, $327,000. About 1,394,000 customers will benefit by the cut.

"The companies accepted the cut without reservation," Mr. Biggs said. "By their willingness to agree to a reduction under current conditions, the companies indicate their confidence in the economic future of the areas they serve."

Rising costs and excess profits taxes during the war offset increased revenues from utility services and prevented any rate cut, commission members said. Removal of the excess profits tax has been the main factor in making possible the rate reductions, it was said.

Iowa

Rule on Transportation Act

ATTORNEY General John M. Rankin's office ruled last month that public school busses cannot be used to transport Iowa children to or from a parochial or other private school.

In a 10-page opinion by Oscar Strauss, assistant attorney general, the state's legal department said that, under the new $2,000,000-a-year public school transportation act, all school bus powers are placed in the hands of the local school board, subject to certain regulations. Some of the regulations are contained in the law itself, and a few others have been promulgated by the state department of public instruction.

The opinion then quoted one section of the act which directs local school boards to "provide transportation for each pupil who attends public school."

"Significance attaches to the statement that the duties imposed provide transportation 'for each pupil who attends public school,'" the attorney general's opinion said.

The opinion added that "public school" has a statutory meaning.

Kentucky

House Passes Co-op Measure

A BILL to extend scope of rural electric cooperative associations was passed by the state house last month by a vote of 78 to 0 after the house utilities committee had eliminated one section.

The deleted section would have allowed the

coöperatives to assist customers financially in building and operating cold storage and processing plants. The bill, sponsored by Representative Kelse H. Risner, Lee City Democrat, was sent to the senate.

Also passed 78 to 0 was a bill introduced by Representative Sylvester J. Wagner, Covington Democrat, to extend powers of the motor transportation division. It would allow the division to grant stays of operation to permit holders and to allow them to abandon operations temporarily. Under present law, those granted operating permits are required to begin operations within sixty days after issuance of permits. This bill also went to the senate.

Michigan

Gas Contract Explained

How the Ford Motor Company contracted to buy gas direct from Panhandle Eastern Pipe Line Company, because it feared the Michigan Consolidated Gas Company would be unable to supply its postwar needs, was revealed at a hearing before the state public service commission recently.

The hearing, on a petition of the gas company to restrain Panhandle from directly serving Ford, began on February 14th.

Witnesses said that in 1944 Michigan Consolidated representatives were asked to supply 25,000,000 cubic feet of gas daily as compared with a 15,000,000 maximum under its prevailing contract.

The gas company officials said no more than the 15,000,000 cubic feet could be supplied, it was testified.

Other witnesses brought out that Ford now seeks a maximum of upwards of 50,000,000 feet. A contract with Panhandle was negotiated to supply this demand, and construction of an 18-inch main from the Panhandle measuring station to the Ford plants is all but completed.

The gas company charged that Panhandle lacked a certificate of public convenience and necessity, and illegally entered into the Ford contract.

It asserted that as distributor in the area for Panhandle it was able and willing to furnish the Ford requirements.

Henry Fink, vice president and general manager for the Detroit area of the gas company, said that Panhandle is obliged to furnish gas for industrial use but ignored a request from the gas company for the additional gas while negotiating the contract with Ford.

The pipe-line company contends that even the Federal Power Commission has no control over direct sales to large industries in Michigan and other states.

OPA Takes Adviser Rôle

The Office of Price Administration recently took up a rôle as friend and adviser to the circuit court in the suit brought by Wayne County Council CIO to nullify the 10-cent Detroit street railway fare.

Circuit Judges Clyde I. Webster, Robert M. Toms, and Arthur Webster on February 19th denied OPA the right to intervene in the suit.

However, they asked Herbert Scharfman, OPA utilities counsel, if he would make himself and others available as friends of the court in the case. Scharfman suggested himself, Harry R. Booth, chief of the OPA Utilities Division, and Hicks G. Griffiths of the administrator's office.

Judge Toms warned Scharfman that "if you go in, you sacrifice the right of appeal." Scharfman agreed to act in the new capacity.

Ernest Goodman, attorney for the CIO council, who has contended the new fare is inflationary and unreasonable, was asked by Judge Arthur Webster:

"Are you sure all 350,000 of your members feel alike in this matter?"

"I am only sure they never feel alike on any subject," replied Goodman.

Minnesota

Gas Plan Scored

Regret that St. Paul voters must ballot on both the natural gas question and on city officers for the next two years at the city general election April 30th was expressed in an address last month by Fred H. Strong before the St. Paul Association of Officemen.

Speaking one week after William Parranto, utilities commissioner, addressed the group on the advantages of natural gas, Strong said he was sorry the date of the votes on the two questions was the same, because "in the heat of political campaign it is sometimes difficult to distinguish between facts and fancy, when the jobs of officeholders are at stake."

In answering the claim of natural gas proponents that new industry will be attracted to the city if the cheaper fuel is used, Strong, public relations counsel for the Koppers Com-

pany, which manufactures the gas at present used in St. Paul, said the record shows otherwise.

In the period from 1940 to 1945, Minneapolis—with natural gas—scored a 14.3 per cent gain in the number of manufacturing concerns, while St. Paul—without it—recorded a gain of about 17.6 per cent, Strong stated.

In the same 5-year period, he said, during which natural gas has been available in Minneapolis, St. Paul's percentage increase in employment—according to United States Employment Service figures—has been 49 per cent greater than the Minneapolis increase.

Nebraska

RFC Disapproves Loan

THE Reconstruction Finance Corporation has decided to "decline at this time" to approve an $8,000,000 loan for the Midstate Public Power and Irrigation District project in Nebraska, it was announced recently.

Charles B. Henderson, chairman of the board of governors of the RFC, said the case might be brought up for restudy later.

New Jersey

Demands State Control Unions

MANAGEMENT spokesmen agreed on February 15th that there ought to be a law "to take the gun out of the pocket of labor." To that extent they joined in indorsing the Edge administration's bill to curb public utility strikes, on which the state senate judiciary committee opened hearings that day.

But they disagreed over some of the bill's other features—notably the section empowering the governor to seize a struck utility plant.

Spokesmen for organized labor, as expected, were solidly against the Edge measure, denouncing it as "legislation by frenzy" which would actually increase the number of strikes.

As introduced by Senate President Haydn Proctor (Republican, Monmouth), the bill provides for a 45-day "cooling-off" period, a 3-man fact-finding board with subpoena powers, a secret strike ballot to be conducted by the state mediation board, and a year's suspension of any employee who went on strike after the state had intervened.

It was former Judge William H. Speer, counsel for the Public Service Corporation, who made the statement about taking the gun out of labor's pocket. He said "the safety of the people of the state" should supersede both labor and management.

New York

Bill Would Let Utilities Use Power

A NEW plan for development of the power potentialities of New York city's water supply system was put before the state legislature last month in a bill sponsored by Senator Arthur H. Wicks, Kingston Republican, and Assemblyman Thomas A. Dwyer, Brooklyn Democrat.

The measure would authorize the city board of water supply, subject to the approval of the board of estimate, to lease the use of water in the city's vast reservoirs and aqueducts upstate to private utilities for generation of hydroelectric power.

The plan springs directly from problems encountered in connection with the construction of the Delaware water supply system, in which there are now pending claims totaling $5,500,000 for damages against the city. Central Hudson Gas & Electric Corporation is asking $2,500,000 for damages it contends it already has suffered at Rondout creek, while the Rockland Light & Power Company's claim for $3,000,000 is based on damages expected in the city's diversion of waters in the Neversink river.

Scores Utility Proposal

THE state public service commission recently disapproved a plan for reorganization of the capital structure of the Kings County Lighting Company, a subsidiary of the Long Island Lighting system.

The company's plan, involving material changes in its capital structure and a reduction in its capital stock, was held by Milo R. Maltbie, chairman of the commission, to be inequitable to present preferred stockholders. He held also that through failure to provide for needed adjustments in its capital accounts and depreciation reserves, the company had not solved its problems.

The plan contemplated a reduction of $1,966,935 in the capital value of the common stock, this amount to be made available for adjustments in the balance sheet accounts, particularly the depreciation reserve. The company proposed to exchange one share of new 4 per cent preferred stock with a par value of $50 and certain amounts of new common stock for two shares of outstanding preferred stocks having a par value of $100 a share. This exchange would reduce the outstanding preferred stock from 44,000 shares to 22,000 shares and would provide a reduction in capital value of $3,300,000.

Chairman Maltbie's opinion analyzed the company's proposal and stated that "the plan is neither equitable nor wise from a financial standpoint."

Heads Power Agency

FOLLOWING immediately an announcement of his election as chairman of the New York State Power Authority, Major General Francis B. Wilby said recently that he would go to Washington to urge senatorial ratification of the pending agreement with Canada for development of the St. Lawrence seaway.

The general made this known after a conference with Governor Dewey, at which he said "nothing else but the seaway was discussed."

General Wilby, who was appointed by the governor to the authority early last month on his retirement after forty-four years as an Army engineer, called the proposed seaway "one of the best projects we have in the United States."

The general was elected chairman of the authority on February 13th in New York city. Fred J. Freestone of Interlaken was elected vice chairman, while Ralph Gunn Sucher, not a member of the authority, was renamed executive secretary and counsel.

Antibias Law Held Binding

NATHANIEL L. GOLDSTEIN, state attorney general, ruled in Albany recently that the state law against discrimination applies to state and local governments as well as to individuals.

The opinion was an answer to a request of the state commission of discrimination, which said it had a complaint against the City hospital on Welfare island, accusing the hospital of bias in the hiring of employees. The exact nature of the accusation was not disclosed.

"It is entirely clear that the statute was intended to apply to the state, its agencies, and the subdivisions of the state," the attorney general said in his reply to the commission. "It is my opinion that your commission has jurisdiction over the City hospital of New York."

Ohio

City Probes Petitions

THE validity of referendum petitions submitted by a privately owned utility to block a $500,000 municipal light bond issue was under investigation last month by Columbus city officials.

Scheduled to become effective last February 13th, the issue was stopped by petitions sponsored by the Columbus & Southern Ohio Electric Company. Now council must submit the bond issue to a referendum vote May 7th.

Councilman Robert T. Oestreicher called for the investigation and council supported his demand by unanimous vote. The councilman said "signers were led to believe they were asking for improvements of the municipal light plant instead of a referendum."

A 3-man committee was selected for the inquiry.

An official of Columbus & Southern Ohio, who asked that his name not be used, took council to task for passing the bond ordinance. He said it was in "direct violation of a pledge in 1943 not to permit any general obligation bonds for five years."

Pennsylvania

Power Strike Postponed

THE Pittsburgh power strike was postponed for one week on February 25th, less than a half hour before the 12.01 strike deadline.

The union's general committee decided after a more than 2½-hour meeting with George L. Mueller, president of the Duquesne Light Company's independent union, that a meeting of its members would be held on March 1st to decide whether the wage issue would be settled by arbitration or strike.

The committee resolved that an arbitration plan be drawn up in advance of the union meeting and submitted to the membership.

The last-minute action averted a strike of 3,400 members of the independent union which would have hit hard at home life and business.

Streetcar service already had been halted to conserve power, and many industries, offices, schools, restaurants, and other establishments had planned to close on the twenty-sixth. The strike would have affected 1,400,000 persons in Allegheny and Beaver counties.

It would have been the second power strike within two weeks. The previous one was called off after nineteen and one-half hours when the union agreed to mediate its demands. But a week of mediation failed to break the wage deadlock and the strike was called again.

Mr. Mueller said the entire membership of the union would vote on whether to accept arbitration.

The company's highest offer had been a 7½ per cent wage increase, while the union had reduced its demands to an immediate 20 per cent increase. It had once asked as much as 37 per cent.

An arbitration procedure aimed at ending the power strike threat was in the hands of the Duquesne Light Company workers' strike committee on February 28th. If it approves it, the 3,400 members of the Independent Association of Employees of the utility company and affiliated companies would vote on it March 1st and 2nd.

The agreement on procedure was reached at a meeting attended by representatives and attorneys for both the company and the union, Mayor David L. Lawrence, and Federal Conciliator Charles Kutz.

FPC Approves Proposals

APPROVAL of Northern Pennsylvania Power Company's proposal to make accounting adjustments involving the elimination of $1,134,355 from electric plant accounts was announced recently by the Federal Power Commission. This amount represents write-ups or other excesses over original cost of the electric plant, but does not include adjustments applicable to its steam-heating plant in the amount of $25,600, which the company has also agreed to eliminate.

Prior to the order announced last month, the company had disposed of $121,755 of the excess over original cost in connection with the recording of retirements. Thus a total of $1,256,110, including the amount involved in the recent order, has been eliminated from the company's electric plant accounts since reclassification and original cost studies were filed in 1940, according to the recent announcement.

Of the $1,134,355 involved in the order, the company will dispose of the $627,250 remaining in Account 100.5, Electric Plant Acquisition Adjustments, by a charge to Account 258, Other Reserves, which is designated by the company as "Reserve for Amounts in Excess of Original Cost of Electric Property, Plant, and Equipment" and was created in connection with certain refinancing in February, 1945, by transfers from earned surplus and capital surplus.

The balance of $507,105 remaining in Account 107, Electric Plant Adjustments, will be eliminated by charging $187,490, representing unrecorded retirements, to Account 250, Reserve for Depreciation of Electric Plant, and $319,615 to Account 258, Other Reserves.

The company's plan also has been approved by the Pennsylvania Public Utility Commission.

Texas

Line Construction Planned

CONSTRUCTION was scheduled to begin soon on a new 132,000-volt electric power transmission line to extend from Trinidad to Sherman by way of the Dallas-Fort Worth area, John W. Carpenter, president of Texas Power & Light Company, announced recently.

This new line will provide power for further industrial development of the north and central Texas area served by TP&L, as well as emergency capacity and reserve power for the rapidly expanding Dallas-Fort Worth industrial area.

"This new transmission line was planned several years ago, at which time engineering and survey work and purchase of right of way were started," Carpenter said. "Wartime scarcity of materials needed to build the line made it necessary to delay construction until after the war.

"As soon as priorities were removed in 1945, all materials needed for building the line were ordered and now they are beginning to arrive."

The new line, which will total 135 miles in length, will provide another means of bringing power from TP&L's 158,000-horsepower Trinidad generating station into this area served by the company. It also will provide a backbone line which will be highly serviceable in marketing power generated at the government-financed hydroelectric generating station in north and central Texas, the company's president said.

End Strike Threat

A THREAT by AFL unions to close down city-owned utilities in Houston was canceled on February 24th, but 300 additional AFL union workers joined the strike for wage increases and union recognition.

D. W. Maxwell, secretary of the Houston Building and Construction Trades Council, AFL, said in a statement to press and radio that two union affiliates would not carry out

their threat to call the workers off their jobs. The action was taken, he said, because "we have no desire to place a hardship upon the citizens of Houston, and for this reason only did we come to this decision."

The union estimated that 1,000 were now on strike.

Mr. Maxwell had said, following a breakdown in negotiations for union recognition and wage increases on February 23rd, that all workers would be withdrawn from the city-owned water plant, sewage and gas plants and garbage truck lots at 5 PM on the twenty-fourth.

Although men were striking and city-owned utilities were being picketed, operation continued with skeleton crews of union men who passed picket lines with special permits issued by the union.

Buys Water System

THE city of Mercedes has completed purchase of its water system from Central Power & Light Company for $175,000, Mayor D. L. Heidrick announced recently. Robert German, formerly of Kansas, has been named manager of the system.

Mercedes recently issued bonds to finance the cost of the system and improvements.

Washington

Utility Bid Expected

NEGOTIATIONS for the $135,000,000 purchase of Puget Sound Power & Light properties appeared to be moving into their final stages recently as public utility district officials and attorneys reported a firm bid may be made to the company within the next few weeks.

One of the numerous details of the transaction is negotiation of three contracts involving the bloc of PUD's which would take over and operate the power-generating facilities, the Bonneville Power Administration, and the Whatcom County Public Utility District.

Under the arrangement with Whatcom Coun- on February 19th, the Whatcom group would be only one of three PUD's which would buy power from the Bonneville Power Administration instead of from a "power pool" which would be formed to deliver power to the various districts.

The other two are the Pacific and Cowlitz County Public Utility districts.

Under the arrangement with Whatcom County PUD, Bonneville power would be carried over PSP&L transmission lines under one contract; distribution facilities would be purchased as Whatcom's share of the properties under a second contract; power would be delivered at a special rate by Bonneville under a third contract.

Frank Ward, manager of the Puget Sound division of Bonneville, said that discussions would continue on this third contract, which was drawn more than a month ago and had been under consideration ever since.

Ward attributed hesitancy on the part of Whatcom officials to enter into the contract to their apprehensions over the possibility that other PUD's might receive power at a rate lower than that offered by Bonneville.

At the same time PUD officials flatly denied that bankers have refused to participate in a syndicate to underwrite the $135,000,000 bond issue.

Bills Not Liens

ELECTRIC bills of the Clark County Public Utility District are not liens against the users' property, Heye H. Meyer, president of the PUD commissioners, said in a statement recently. The statement follows:

"Several of our customers report they have been informed that unpaid PUD electric bills could be assessed against their property. This is absolutely untrue. I sincerely hope this story is not an effort by enemies of public power to frighten our 5,000 new customers in Vancouver.

"The story may have originated from the fact that water and light bills of city-owned plants are liens, but the state PUD laws omit any provision of that kind. We have letters on file in the PUD office from the state division of municipal corporations definitely stating that no such provision exists in the laws under which we operated."

Utility Drops Suit

THE Portland General Electric Company has dropped its legal battle in the United States Circuit Court of Appeals at San Francisco over the $801,000 award for its properties in Clark county and the appeal there was dismissed, D. Elwood Caples, attorney for the PUD which acquired the holdings, was advised on February 20th.

The PUD paid the money over and it was accepted by PGE after a jury in the Federal District Court at Tacoma fixed the value of the properties last fall. The payment was made in December and the PUD took over the holdings in January and has operated them since.

The company, however, took an appeal on the value fixed, but Caples was advised that it later made the motion that the matter be dismissed in the court at San Francisco.

The company served residential and commercial customers.

The Latest Utility Rulings

Missouri Commission Issues New Order Regulating Depreciation Funds

GENERAL Order No. 38-A, 55 PUR (NS) 227, relating to depreciation funds and income thereon, has been canceled by the Missouri commission and a new order has been entered. The commission held that fixing the interest rate on such funds is a function of regulatory authorities, and that the commission has power to prescribe rules and regulations as to the amounts to be credited for their use. Commissioner Wilson, dissenting, expressed the view that the commission does not have power to fix the rate for earnings on the depreciation account.

Various utilities denied that their customers have any interest, in law or in fact, in depreciation funds, or any other utility funds or property. Their witnesses agreed, however, that when an undepreciated rate base is used, a proper credit for use of depreciation funds can fairly be applied for the benefit of customers.

The commission did not see how this principle could be considered as other than fair and equitable. Depreciation is a component part of rates, and funds to pay for depreciation are currently supplied by customers through rates. When such funds, pending their use for replacement of depreciated and retired plant, are used for other purposes, the customers are equitably entitled to an appropriate credit for such use, just as any investor is entitled to a return on funds supplied to a corporation for the corporation's use.

It was said to be obvious, however, that if the utilities' allowable return is reduced by income on depreciation funds, there should be an undepreciated rate base. This is true, said the commission, for the reason that to reduce the allowable return by deducting depreciation from the rate base and also to reduce it by income on depreciation funds would obviously constitute duplication.

The commission announced that its future policy would be, whenever possible and warranted by the facts, to use a rate base measured by undepreciated original cost of property, to which would be added materials and supplies and a reasonable allowance for cash working capital.

The commission saw no reason for requiring the utilities to record currently in their books of account, as a reduction of annual charges to operating income for depreciation, the income attributable to use of depreciation funds. The commission did, however, require that the utilities should include in their reports schedules, in such form as the commission might prescribe, showing the income from the investment of moneys in depreciation funds.

While depreciation reserves are usually provided from operating income, the commission noted that in some cases depreciation reserves have been provided in part by appropriations from utility surplus, or otherwise than from operating income. Total depreciation reserve balances in such instances, said the commission, should be adjusted so that the commission might ascertain the principal amount of depreciation funds subject to an income credit.

Income from the investment of moneys in depreciation funds is to be computed at the rate of 3 per cent per annum. The commission fixed this figure after considering arguments as to the safety of income from such funds and low interest rates on utility bonds. The fact was also considered that depreciation funds sometimes remain idle or are invested in short-term government se-

curities yielding, in many instances, less than 1 per cent per annum.

Utilities which use depreciation funds for construction of property, said the commission, are entitled to just compensation, but, on the other hand, customers who supply depreciation funds are entitled to receive adequate and just recognition with respect to the use of the funds by the utilities consistent with the worth or value of the funds. The utilities, it was pointed out, assume all the risks associated with ownership, management, and operation, including losses, whereas the customers assume no responsibilities or risks whatever with respect to the property. *Re General Order No. 38-A (Case No. 10,723).*

License Required under Power Act for Dam Which Would Affect Navigation

THE order of the Federal Power Commission, in (1944) 53 PUR (NS) 177, requiring the Georgia Power Company to obtain a license to construct a power project in the Oconee river 4 miles above Milledgeville, Georgia, has been upheld by the United States Circuit Court of Appeals for the Fifth Circuit. The company had filed a declaration of intention as required by § 23(b) of the Federal Power Act, but the commission held that operation of the plant would both fluctuate and reduce the navigable depth of water below the dam and would thus affect navigation. Interstate commerce would be affected and, therefore, a license must be obtained.

Both the Oconee river and the Altamaha, into which it flows below Milledgeville, have been used for navigation over a long period of years by light draft or other river craft, although the Altamaha has been used the more extensively and navigation above Milledgeville has apparently been negligible. The court concluded that the commission's findings were supported by substantial evidence and said that in such circumstances the courts might not disturb them.

Reference was made to the decision in United States *v.* Appalachian Electric Power Co. (1940) 311 US 377, 36 PUR (NS) 129, in which the court gave the term "navigable waters" in the Federal Power Act a broader construction than that laid down in The Daniel Ball (1871) 77 US 557. Navigability, it was said, must be determined in the light of the effect of reasonable improvement.

Congress, it was held, has power to legislate where commerce between the states may be affected. Such power is not restricted to an adverse effect upon the present and existing navigable capacity of Federal waters. The court declared:

> The Federal Power Act was intended to develop, conserve, and utilize the navigation and water power resources of the country, and to that end requires that projects licensed shall "be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce," hence, "if upon investigation (the commission) shall find that the interests of interstate or foreign commerce would be affected," it may require a license.

Georgia Power Co. v. Federal Power Commission.

Redevelopment of Dam Allowed to Provide Necessary Hydroelectric Power

AN application for a certificate authorizing the redevelopment of the Wilder dam in Vermont, to increase hydroelectric power production, was granted by the Vermont commission where the applicant showed that the proj-

ect was for the good of the people of the state.

Evidence was presented to show that the amount of hydroelectric power available in New England is barely adequate for its present needs.

The commission observed that with the rapid electrification of rural areas and the anticipated return of many electrical appliances to the consumer market, the load carried by electric power companies will be greatly increased. It is to the advantage of Vermont, it was noted, that New England as a whole be prosperous, since the purchasers of its milk, poultry, eggs, farm, and forest products are those employed in New England.

A finding of fact was made that at present the state does not produce enough hydroelectric power for its own needs. From this fact, together with the conclusion that dependable power is as important to the activities of Vermont farms (milking machines, water pumps, cooling systems, etc.) as to New England industries, it was reasoned that the redevelopment of the Wilder dam was for the public good.

Further evidence introduced to support this finding brought out the miscellaneous beneficial effects of the project, such as decreasing river odors, checking mosquito breeding, etc.

To the contention that there is no need for redevelopment of this Vermont dam since the proposed St. Lawrence seaway and development of hydroelectric power at International Rapids will provide power more than adequate for the needs of all New England, it was answered that what must be considered is that which is in being or in immediate prospect, and the commission opined:

> Perhaps there will be such progress in the development and in the use of the splitting of the atom that all now-existing devices for power development—yes, even hydroelectric power generated on the St. Lawrence seaway—will become outmoded, obsolete, and archaic.

Re Bellows Falls Hydro-Electric Corp. (No. 2285).

Utility Not Permitted to Escape Service Obligation in Part of Territory

VARIOUS defenses interposed by a water utility, in a proceeding to obtain a water supply, were overruled by the Colorado commission where the applicants for service lived in the territory covered by the utility's certificate. A public utility, said the commission, has a duty to serve all those within its territory who desire service and are willing to comply with the rules and regulations.

Applicants had been advised that domestic water service would not be rendered to persons who had purchased lots from a landowner who, it was alleged, had repudiated a contract with the utility operators. The commission pointed out that a public utility cannot pick and choose its customers, and a mere voluntary statement by the manager and one of the partners of the utility that no service would be furnished to such purchasers of lots could not absolve the utility from its duties under the law.

A defense based upon the fact that schedules of rates filed by the utility had been suspended by the commission and that present rates were inadequate was rejected.

The commission stated:

> Where a utility does not have tariffs or schedules on file with the commission at the time of the suspension, or proposed tariffs or schedules, then, under the law, it would be the duty of the utility, in the event of suspension by the commission, to file tariffs or schedules containing rates and charges which would be acceptable to the commission until the questions relative to such suspended schedules could be determined. In any event, the respondent is not in position to base a defense to this proceeding upon his own violation of the law in not filing tariffs in compliance with § 16. A public utility will not be heard to urge its own transgressions in order to escape its duty to serve the public.

The fact that the utility considered its

rates to be inadequate, which matter was at issue in a pending proceeding before the commission, was rejected as a ground for refusing service. Moreover, contractual difficulties between the owners of a public utility, said the commission, are collateral to the question of the duty to serve, and evidence relating thereto is properly excluded in a proceeding to compel service. *LaBate et al. v North Federal Water System (Application No. 7000, Decision No. 25323).*

Profit-sharing Plan Approved

THE city of Waukesha, Wisconsin, as a public water utility, acting through its water utility commission, has obtained approval by the state commission of a profit-sharing plan. The Wisconsin Statutes provide that no such arrangement shall be lawful until it is found by the commission to be reasonable and just and consistent with the purposes of the law.

The plan, as proposed, provided that employees should share in net income as determined by the auditors. Net income would be the amount remaining after retirement expenses, local taxes, and dividends on the city equity have been deducted. Employees would share on the basis of 4 per cent of this net total, but no employee's share should exceed $200 annually. Each employee with the utility for a period of six months during the years in which the plan is effective would share on the basis of his total wages and salary, including the salary savings plan in effect for most of the employees. Payment would be made after the auditors' report.

Minor changes were made for clarification. Since the amount of increase would be limited to an amount which normally would not be questioned from a regulatory viewpoint and since the smallest percentage increase would accrue to the highest salaried employee, the proposed plan in general, said the commission, met the statutory requirements of being reasonable and just and consistent with the statutes.

The commission pointed out clarifications for the purpose of interpretation of the plan and in order to avoid similar difficulties in outlining any plan which might be contemplated in the future.

The commission made the following statement:

> In one paragraph the plan provides that the employees share in "the net income . . . as determined by the auditors . . . " The next paragraph provides "that the net income will be the amount remaining after retirement expenses, local taxes, and dividends on the city equity have been deducted." The net income is thus defined on two separate bases. Reference is made to "retirement expenses" and the record shows that this is intended to be "depreciation expense" determined from rates certified by the commission. The term "local taxes" refers to tax equivalents (§ 66.06 (11)(c)). "Dividends" on the city equity was intended to cover the customary practice in Waukesha of appropriating to the general fund a 4 per cent "return" on the city equity account balance.
>
> Net income is to be determined by the auditors who shall take into account depreciation and taxes as defined above. Four per cent "dividends" on the city equity account balance shall be deducted from net income and the employees are to share in the remaining balance as provided for in the plan.

Re Waukesha Water Utility (2-U-2097).

Motor Vehicle Operation under Lease

THE Louisiana commission held that a "lease" arrangement between a motor vehicle operator and a shipper did not meet the necessary tests to exempt the owner from the status of a contract carrier.

The state commission concluded that the propriety of a proposed lease ar-

rangement should be tested by the following standards:

> . . . (1) the lease should completely remove the vehicle or vehicles involved from the control and domination of the lessor for the term of the lease; (2) it should place the vehicle or vehicles so entirely under the control of the lessee as to make them in effect the private vehicles of lessee; (3) the lease should be for a specific term exhibiting some degree of permanence, and should name a specific rental or compensation to be paid the lessor which is not contingent on the actual service rendered by the vehicle or vehicles but is fixed in advance at the inception of the lease; (4) that the actual performance under the lease, rather than the written stipulations in the document itself, shall be deemed to be conclusive evidence of the character of the operation; and (5) that the lessee's control of the vehicle or vehicles shall not only be absolute but *exclusive*.

Louisiana Public Service Commission v. Pelican Tank Lines (No. 4127, Order No. 4207).

Other Important Rulings

THE Missouri commission, holding that it had authority to approve or disapprove motorbus routes in a coördinated motorbus and streetcar transportation system, rejected protests based on the claim that there would be destruction of property values as a result of route relocation. *Re St. Louis Public Service Co. (Case No. 10706).*

The supreme court of Oklahoma held that the corporation commission had no power to require a trustee of a bankrupt railroad, in possession of the railroad property, to construct a highway railroad grade crossing in the absence of the consent of the United States District Court, in which the trustee was appointed, to present an application for a commission order directing construction. *Thompson v. State, 164 P2d 232.*

A special charge for the installation of handset telephones was eliminated by the Wisconsin commission in favor of a change-in-type charge to be applied when the subscriber's instrument is changed to the handset type at his request, the commission commenting that handset instruments are now standard equipment. *Re Almond Telephone Co. (2-U-2092).*

The United States Court of Claims held that a contract under which a municipality agreed to sell water to a Federal hospital at the city reservoir at the within-city rates, rather than at rates applicable where water was furnished for use outside the city by means of facilities constructed and maintained by it, was valid although the water delivered to the Federal government within the city was used in the hospital outside the city limits, since the city did not, at its expense, furnish the government with any of the facilities and services customarily furnished to extraterritorial consumers. *Department of Water and Power v. United States, 62 F Supp 938.*

The Indiana commission held that the fact that railroad freight rates were voluntarily reduced after a complaint was filed against such rates does not preclude it from considering the rate situation. *Matt Schnaible Coal Co. et al. v. Chicago & Eastern Illinois R. Co. (Docket Nos. 9549, 9318, 9316, 9362).*

The Colorado commission authorized proposed common motor carrier service on call and demand for the transportation of livestock and farm products, notwithstanding that the applicant had been so operating without proper authority, where the proposed service was found to be essential, the commission stating that the public should not be denied essential service merely to punish an individual. *Re Green (Application No. 6900, Decision No. 25282).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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PUBLIC UTILITIES REPORTS

NEW YORK PUBLIC SERVICE COMMISSION

Re Long Island Lighting Company

Case No. 12258
December 28, 1945

INVESTIGATION *of utility company's refusal to serve residences being picketed by labor union; case dismissed.*

Service, § 143 — Duty to serve — Extent of obligation during strike.

1. A public utility company, whose employees are barred by a picket line of union men seeking to organize workers on house construction, has the duty to take all proper steps to enable it to discharge its statutory duty to furnish service properly applied for, p. 6.

Service, § 143 — Duty to serve — Service to union picketed buildings.

2. The Commission refrained from ordering a public utility company to install service at residences where the company was prevented from doing so by its unionized employees refusing to pass an established union picket line to do the work, on the grounds that other tribunals were more appropriate to handle labor disputes and that such an order would be fruitless, p. 6.

Service, § 143 — Duty to serve — Relief from obligations — Union pickets.

3. A public utility company whose unionized employees refused to pass an established union picket line to install service properly applied for is not excused from furnishing such service until it has made a thorough effort to have the matter in controversy determined by an appropriate tribunal, p. 6.

Labor, § 4 — Jurisdiction of Commission — Labor dispute.

Statement that the New York Commission is not an arbiter of labor disputes, p. 6.

Labor, § 8 — Duty of public utility company — Protection of union employees.
Statement that while a public utility company has an obligation to furnish service properly applied for, it also has an obligation to its employees to protect them from any embarrassment or claim that they have violated their obligations to their union, p. 7.

Labor, § 7 — Duty of public utility — Settlement of collateral labor disputes.
Statement in separate concurring opinion that public utility companies should not be compelled to carry the burden of resolving labor difficulties for others, pp. 7, 8.

Service, § 143 — Duty to serve — Strikes — Relief from obligations.
Statement in separate concurring opinion that a public utility company's statutory duty to furnish service properly applied for, when a labor dispute is in progress, can be relieved only by legislative action, p. 8.

(ARKWRIGHT and EDDY, Commissioners, concur in separate opinions.)

APPEARANCES: Philip Halpern, Counsel (Frank C. Bowers, Assistant Counsel), for the Public Service Commission; Colonel Charles G. Blakeslee, Mineola, Long Island, for Long Island Lighting Company; William J. Levitt, Manhasset, New York, President, Levitt & Sons, Inc.

By the COMMISSION: This proceeding was initiated in view of allegations made orally and in writing by Mr. William J. Levitt, president of Levitt & Sons, Inc., a builder and developer of suburban homes either directly or through corporations controlled by Levitt & Sons. In brief, these allegations were that the Long Island Lighting Company, a public service corporation under the jurisdiction of this Commission, had refused to provide gas and electric service to houses, some of which had been sold and others for which the builder had contracts of sale and which he was prepared to deliver to owners as soon as the utility would connect its lines and render service.

In explanation of the situation, Mr. Levitt stated that a picket line had been established across the entrance to the development by the Building and Construction Trades Council of Nassau and Suffolk counties, an A. F. of L. organization, and that the Long Island Lighting Company employees had refused to cross the picket line, such employees being members of an A. F. of L. union.

In view of the statutory obligation of a public utility, and the extremely acute and serious housing situation in the metropolitan area, and the fact that the statements were mere ex parte allegations made by only one of the various parties involved, it was decided that a hearing should be held and the facts developed, in order that the Commission might determine if it had jurisdiction, and if so, the extent of its jurisdiction and what action should be taken. Accordingly, a hearing was held on December 20, 1945, twelve witnesses testified, 180 pages of testimony were taken, and 13 exhibits submitted.

Mr. Levitt testified that the development is known as North Park in Roslyn Heights, Long Island, town of

North Hempstead. His company laid out and constructed the streets in this development and have proceeded with the building of 37 houses some of which are complete and others in various stages of completion. Prior to the establishment of the picket line, the Long Island Lighting Company installed gas mains in the streets of the community and overhead electric lines in the rear of the houses pursuant to an easement granted by the builder to the lighting company. Fourteen gas service pipes and 12 electric service drops are connected to the houses constructed. There are 12 gas meters installed in the houses, 7 of which are locked. Presently there are 4 houses in the community receiving complete gas and electric service. The fifth house receives gas service but the owner has been unable to have the electric service to his house completed and, as electric service is necessary to the operation of his gas heating appliance, he has constructed his own electric line leading to the neighbor's house.

It is undisputed that applications in proper form for utility service have been made originally by the builder, and again by individuals who had signed contracts for the purchase of these homes. The failure to make the service connections stems from another cause. Mr. Levitt testified that his company works on an "open shop" basis and has no contract with any union but that the representatives of the Building and Construction Trades Council have requested him to organize on a "closed shop" basis. Following a conversation between Mr. Levitt and the union representatives, a month ago, in which he told them that he would let them know his answer after his return from a trip in January or February, a picket line was established. Mr. Carpenter, vice president of the Long Island Lighting Company told Mr. Levitt that he had ordered the work of installing gas and electric service to the several houses but that the employees of the Long Island Lighting Company would not cross the picket line. Mr. Levitt said that of the 37 proposed houses he had contracted to deliver for occupancy 35 of them, 10 by January 2, 1946, 10 by February 1, 1946, and the balance by March 1, 1946. According to the testimony, his concern established a rule whereby veterans of the late war would receive priority in the purchase of houses in the development over nonveterans and of the 35 houses already deeded or under contract of sale 18 of them have been sold to veterans. He added that if it were not for the establishment of the picket line and if the gas and electric services were connected up, construction of the houses could be accelerated and perhaps most of them occupied long prior to March 1, 1946.

Levitt, testifying as to his company's ability in developing building sites said, given the permission and securing the material, he and his associates could construct and connect up the gas and electric services together with the meters. Chairman Maltbie asked the witness if he would undertake to install these service connections if permission of the company and the necessary materials were obtained. The witness answered that he would and that this arrangement would be preferable to his organization.

At the hearing five individuals vol-

untarily took the stand. Four of them had contracted to purchase homes and one had taken title to his home and had occupied it. Four of these witnesses testified to the fact that they had been members of the armed forces, that they were married, and that it was essential to gain occupancy of their homes at the earliest possible moment. Mr. Thomas, who is actually living in his house, has his gas connection but the Lighting Company has not as yet made the electric connection. Meanwhile, in order to secure electricity for his home, including the operation of the gas furnace, he has run a temporary line from a neighbor's house.

Counsel for the Long Island Lighting Company contended that the company was ready and willing to install the necessary service connections and meters and supply gas and electricity to this development but was unable to do so because of a labor situation prevalent at the development. Company's counsel called as a witness Mr. Evarts who is general superintendent of gas distribution for the Nassau and Suffolk Lighting Company. He testified that the mains in the streets had been laid by the firm of Karlson and Reed. This firm is 100 per cent unionized and up to the time the builder became involved with the building trade unions, they had laid the mains in the streets and installed some of the service connections. When this situation became acute, the contractor was unwilling to proceed further with the work.

The company thereupon explored the possibility of completing the installations of gas service pipe with their own forces. Mr. Davis, assistant superintendent of Nassau and Suffolk Lighting Company, testified how he was instructed on the morning of December 7, 1945, to proceed with a crew from the company's office to the development and to install and connect gas services. He described how he followed his crew, who, according to him, had all the necessary mechanics, materials and tools available but was stopped from entering the development by union pickets. A photographer accompanied the crew. Counsel for the company, through Mr. Davis, presented Exhibits 6, 7, 9, 10, 11, 12, and 13, which are photographs of the pickets, the company's trucks, both gas and electric, and the company's employees standing at the entrance to the development. There is no question that these photographs are posed photographs and that the company made a pro forma effort to carry out their obligations under § 12 of the Transportation Corporations Law knowing in advance that it was a gesture. Mr. Davis testified to the effect that he asked the pickets, whether or not his men or the men assigned to the electrical installation crew could cross the picket line and install the necessary facilities. According to Davis, the pickets told him that they were maintaining a picket line and they had been advised by their superiors (union officials) to allow no one to cross the picket line to install the facilities. However, the company outfit was allowed to enter the property to be photographed with the pickets.

Davis admitted upon cross-examination that he and his crew went to the job expecting not to be allowed to cross the picket line and had taken

a photographer with them to take pictures of the picket line and the pickets bearing the union signs.

Other witnesses for the company testified that they were stopped from making installations in this development by the fact that a union picket line had been established. One, Mr. Gresalfi, a foreman for the Nassau and Suffolk Lighting Company, testified that he was a member of Local B-1049 and it was his belief that if he crossed the picket line, he would be expelled from his union and as the Long Island Lighting Company's employees had a closed shop, he in turn would lose his job.

The company also produced at the hearing under subpoena requested by its counsel, Herman B. Scrivener, business manager, Local B-1049, International Brotherhood of Electrical Workers, which has collective bargaining contracts with Long Island Lighting Company and Nassau and Suffolk Lighting Company. Mr. Scrivener, who took the stand after asking that his rights be protected because he had no counsel testified to the effect that he was informed by a member of the Council of the Building and Construction Trades, Trades Council of Nassau and Suffolk counties, that a picket line had been established at the Roslyn development.

Mr. Scrivener was asked by counsel for the company whether or not of his own knowledge he knew that there had been for at least six weeks a labor dispute in the Levitt development in Roslyn Heights. Scrivener's answer was as follows:

A. Yes, I have been generally informed of that by the Nassau and Suffolk Building Trades Council and specifically informed of it by our sister local, Local 325, which is also in Mineola.

Asked what was the nature of the dispute, he testified he couldn't say as to just whom the dispute was with, but that there had been members of the A. F. of L. unions employed by Levitt & Sons who were no longer employed; and that he was not familiar with the exact facts respecting this situation. He did not of his own knowledge know of the dispute and just took his information from the business representative of the other union.

Mr. Levitt's reply to this is as follows:

Mr. *Levitt*: Mr. Chairman, I would like to make two observations. One will only take a moment. It is on the question of this so-called labor dispute. I perhaps know more about it than Mr. Scrivener or anybody else here. It is a dispute and it isn't a dispute. As far as I know, and I should know, there is no dispute. There have been no overt acts either on our part or the union's part or anybody else's part. It is merely a desire on the part of the building trades unions to organize the job. There is no other dispute, and I think that is so, Mr. Scrivener. I think you will find that is so.

Scrivener further testified under direct examination by Colonel Blakeslee that he informed the company employees of the Long Island Lighting Company of the provisions outlined in their constitution and, according to him, under the provisions in the collective bargaining contracts, if a member of the union is expelled, they would call upon the company to discharge that man.

During the course of the hearing the lighting company was asked whether or not it would permit the real estate company to finish the installation of the utility facilities and install the meters. Counsel for the lighting company stated that he would have to take this question up with the officers of the company and the officers of the union, stating that he was not sure what the company's attitude would be and counsel for the lighting company stated he would be glad to take the aforementioned matter up with the company and with the union and give an answer promptly.

Referring to the foregoing proposal that the building company might itself install the gas and electric facilities with the consent of the Long Island Lighting Company, the following colloquy took place:

Mr. Scrivener: My interpretation of our constitution would result in a strike on the property if such procedure were carried out.

Chairman Maltbie: What procedure? If what procedure were carried out?

Mr. Scrivener: Additional procedure that is not carried over in the provisions of our bargaining contract with the company.

Commissioner Arkwright: What you mean is that if Mr. Levitt were to do that himself and the company were to say "all right, you go ahead and do it" that there would be a strike?

Mr. Scrivener: The company would automatically—

Commissioner Arkwright: Probably as far as the Long Island Company was concerned?

Mr. Scrivener: The company would automatically violate the provisions of our contract and there would have to be a strike.

Mr. Blakeslee: I think that is an answer to your question, Mr. Chairman. I don't have to wait until tomorrow night.

Chairman Maltbie: Well, that is another tremendous responsibility anybody is assuming who does it.

Discussion:

With the great shortage of housing, it is unquestionably in the public interest to do everything possible to complete these houses. Some of the houses constructed by Levitt have been sold and title passed and some are under contract of sale.

[1–3] The Commission is not an arbiter of labor disputes. It is charged by statute with the duty of seeing that public utilities discharge their obligations to the public by furnishing service without unjust discrimination. Under the statute the Long Island Lighting Company has the duty of furnishing electricity and gas to these customers. If the company does not discharge its statutory duty, then this Commission may either by order direct it, and in the event such order is not obeyed, proceed with a penalty action against the company or bring a summary action to compel the company to perform its statutory duty. Issuing such an order under existing circumstances would seem to be a useless gesture.

Counsel for the labor union suggests that there are other tribunals more appropriate to handle labor disputes than this Commission. Upon the facts in this case we agree with this position. It would serve no useful purpose for this Commission to attempt to adjudicate all respective

rights and wrongs of the labor difficulty which exists or express its opinion as to their respective merits.

There is no strike by the employees of the Long Island Lighting Company, nor is there any strike against the owners of the homes in the restricted area who are deprived of utility service because of the dispute between the labor union and Levitt.

The Long Island Lighting Company has an obligation here to furnish service. It also has an obligation to its employees to protect them from any embarrassment or claim that they have violated their obligations to their union. The rights of the union employees under their contract with the Long Island Lighting Company should be protected. The Long Island Lighting Company can submit to the courts the question whether the picket line may properly interfere with the performance by its employees of the work which it is required by statute to perform.

If the Long Island Lighting Company invokes the aid of an appropriate tribunal, it well may be that its present difficulty will be resolved. Without expressing any opinion as to what decision might be anticipated, it is clearly the duty of the Long Island Lighting Company to take all proper steps to enable it to discharge its statutory duty.

The record discloses that the acts of the Long Island Lighting Company to discharge its lawful obligation have been mere token efforts. Without in this case attempting to specify the procedure or to instruct the company as to what legal proceedings it should take, it is the opinion of this Commission that the Long Island Lighting Company cannot be excused from discharging its statutory obligation until it has made a thorough effort to have the matter in controversy determined by an appropriate tribunal.

ARKWRIGHT, Commissioner, concurring: I am of the opinion that the situation presented here is primarily a labor dispute between a builder and organized labor, over which this Commission has no jurisdiction. While there is a legal duty on the Long Island Lighting Company to furnish the service applied for, it is prevented from doing so in the ordinary course by its own employees who are union members and who refuse to pass an established union picket line. They threaten to strike if they are ordered to do so by the company.

It would be fruitless for this Commission to order the company to install the services requested when the order cannot be carried out by the company.

The Long Island Lighting Company may apply for injunctive relief to the courts or possibly before other tribunals but so also may the builder.

The utility should not be compelled to carry the burden of resolving labor difficulties for others. To hold otherwise certainly will result in other instances throughout the state where applications for service may be used to shift the onus of settling labor difficulties from the immediate and involved parties to public utilities, with little trouble to the builder complainant and the expense of litigation borne by the utility, which ultimately may be reflected in its rates to the public.

EDDY, Commissioner, concurring: In view of the opinion of Commissioner Arkwright herein, I wish to

comment further. I agree with the statement that the utility should not be compelled to carry the burden of resolving labor difficulties for others. However, under the statute the utility must furnish the service and nothing can relieve it of that duty except legislative action. The burden is placed upon the utility by the laws of this state, not by any determination made here.

The company owes no duty or responsibility to Levitt to solve his labor difficulties. It, however, under the laws of this state has the obligation to furnish service to anyone asking for it and it has, as is pointed out in the opinion of the Commission herein, a very strong duty to its own employees not only as a matter of contract but as a matter of conscience, not to compel or coerce them to violate their union obligations. The rights of picketing, as they affect the company, may well be different than the rights of the union to picket against Levitt.

By not furnishing service the company is violating the laws of this state and is laying itself open to penalties. It has the duty of making every effort to resolve its difficulties.

NEW MEXICO PUBLIC SERVICE COMMISSION

Re New Mexico Power Company

Case No. 75
January 10, 1946

PROCEEDING *to determine value of electric and water utility properties for rate making; rate base determined and rules prescribed for depreciation reserve.*

Valuation, § 39 — Reproduction cost — Weighted average of comparable properties.

1. A reproduction cost appraisal determined from a weighted average of other properties, in order to avoid the expense of making an inventory, is highly speculative but may be given some consideration for purposes of comparison in arriving at the fair value of property, p. 13.

Valuation, § 36 — Original cost.

2. An original cost study, checked and found to be substantially accurate, should be given great weight and consideration in arriving at the fair value of property, p. 14.

Valuation, § 250 — Contributions in aid of construction.

3. Contributions in aid of construction should be deducted from original cost of property in determining value for rate making, p. 14.

Valuation, § 104 — Accrued depreciation — Deduction of reserve.

4. An amount representing accrued reserve for depreciation is a proper deduction from the gross cost of property in rate base determination, p. 14.

Depreciation, § 22 — Gross revenue basis — Excessive accruals — Straight-line basis.

5. Accrual of depreciation, as determined by an indenture of mortgage which requires accruing of depreciation on the basis of a percentage of gross revenues less maintenance, resulting in a reserve more than sufficient for restoration of capital investment over the life of the property, should be discontinued and depreciation should be accrued on a term-life or straight-line basis, p. 14.

Valuation, § 307 — Working capital — Cash for operating expenses and maintenance.

6. A working capital allowance, in the rate base of an electric utility, for operating expenses and maintenance was held to be proper and reasonable when arrived at by taking one-eighth of the total operating expenses and maintenance charges—equivalent to forty-five days of such charges, p. 16.

Valuation, § 299.1 — Working capital — Cash to cover Federal taxes.

7. No allowance should be included in working capital to cover Federal taxes, since these taxes are paid in arrears and payments are made from current revenues to the extent necessary to meet such payments without calling upon special funds, p. 16.

Valuation, § 225 — Estimated capital expenditures — Working capital.

8. No allowance should be included in working capital for estimated capital expenditures during the coming year when such expenditures are of a routine character and immediate revenues on such expenditures from new customers are anticipated, p. 16.

Valuation, § 343 — Going concern value — Past losses or inadequate earnings.

9. No allowance should be made in the rate base for going concern value because a company did not get any return, or a reasonable return, in past years, where there is nothing of a tangible nature to show the extent of losses or inadequate earnings, p. 16.

Valuation, § 22 — Rate base determination — Value in excess of original cost.

10. An allowance was made in the rate base to represent the difference in actual value of property and depreciated original cost, as evidence of consideration given to a claim for reproduction cost as a going concern and other elements of value recognized by law, p. 17.

Rates, § 197 — Unit for rate making — Combined electric and water departments — Local public interest.

11. Separation of electric and water departments for rate base purposes would not be in the public interest where the combined properties were transferred to the present owner under court guidance and control on the theory that as a matter of paramount public interest the two utilities must be bought as one, where the water department has not been able to support itself or render adequate service or attract needed new capital, and where a joint franchise adopted to carry out this policy contemplates an adequate return on the combined properties, p. 23.

*

By the COMMISSION: Under date of July 5, 1945, the Commission issued its order for and notice of hearing on the above-entitled matter, as required under § 54 of the Public Utility Act, Chap 84, Laws of 1941,

and Rule 27 of the Commission's General Order No. 1, Rules of Practice and Procedure.

Hearing in this docket and matters related thereto was held in the Commission's quarters, Room 29, Capitol building, Santa Fe, New Mexico, August 14 and 15, 1945.

The following appearances were entered at the hearing:

Representatives for New Mexico Power Company: W. A. Keleher, Attorney, Albuquerque; Arthur Prager, President, Albuquerque Gas & Electric Company, Albuquerque; A. J. Maday, Engineer, N. Hollywood, California; M. C. Heffelman, Vice President and General Manager, Santa Fe; J. R. Snyder, President, New Mexico Power Company, Santa Fe.

Representatives for the Commission: W. W. Nichols, Chairman, Robert Valdez and Thomas V. Truder, Commissioners, E. F. Carter, Accountant-Engineer, Richard R. Burwell, Accountant, Robert Ward, Assistant Attorney General.

Representative for consumers: Filo M. Sedillo, Consumers' Counsel.

Representatives for the city of Santa Fe, New Mexico: No one appeared on behalf of the city of Santa Fe, and no protest was received or filed by the city of Santa Fe in this cause prior to or during the hearing. No interest was displayed by the local authorities or consumers in this matter, although notice of hearing appeared in the local papers twenty days prior to the time set for the hearing.

Electric Department—Santa Fe Division, New Mexico Power Company

Under date of May 11, 1937, the Federal Power Commission ordered the New Mexico Power Company to make an original cost study and reclassification of accounts as required under § 2D of the Federal Power Commission's Uniform System of Accounts. The form of 2D report required by the Federal Power Commission made it necessary to separate the electric department from the water department at Santa Fe, and treat it as a separate utility. However, this was for the purpose of arriving at the original cost of both departments including Common Utility Plant, and not to be construed as requiring the two departments to be operated as separate units in conflict with the orders of the Federal court.

The jurisdiction of the Federal Power Commission was questioned by the New Mexico Power Company on the basis that the company was not engaged in interstate commerce and therefore should not be required to comply with the Commission's order. The Federal Power Commission contended that since the New Mexico Power Company was selling power wholesale to the Trinidad Electric Transmission, Railway and Gas Company at the substation located at Dawson, New Mexico, which company was engaged in interstate commerce, the New Mexico Power Company was brought under its jurisdiction in so far as it related to the preparation and filing of reports on reclassification of accounts and original cost. Rather than contest the Federal Power Commission's order, the New Mexico Power Company employed Sanderson & Porter, a New York firm of engineers, to make the necessary examination and study of the New Mexico

Power Company's electric utility property in the Santa Fe and Dawson Divisions, and to prepare the reports required under the Federal Power Commission's order.

Sanderson & Porter at that time had in their employ Mr. Cecil F. Elmes and Mr. A. J. Maday, the same two men employed in May, 1944, to bring the original cost studies and reclassification of accounts report up to date as filed with the New Mexico Public Service Commission in this case.

Testimony was submitted that Mr. Elmes took personal charge of the examination and, with the assistance of Mr. Maday and his fieldmen, made an original cost study and reclassification of accounts report of the electric department of the New Mexico Power Company, including the Santa Fe and Dawson Divisions, from the inception of the company to and including December 31, 1936.

The work was started about the middle of the year 1938 and completed the latter part of the year 1939. Upon completion of the work of Sanderson & Porter, the original cost study and reclassification of accounts report was filed with the Federal Power Commission as required under the Commission's order. The value as stated in the Sanderson & Porter report for the electric department, Santa Fe Division, was established at $749,850.92.

Subsequent to the filing of the report with the Federal Power Commission, the Commission sent to Santa Fe, New Mexico, two accountants and two engineers from its staff to check the report against the records of the company and to make an inspection of all of the electric utility property of the New Mexico Power Company comprising the Santa Fe and Dawson Divisions and to prepare and submit their findings to the Commission upon the completion of their examination.

Under date of December 31, 1940, the Federal Power Commission issued its report dated January 1, 1937, establishing the original cost of electric plant and property in use and useful in rendering electric service in the Santa Fe Division as of December 31, 1936, at $709,254.37, as compared with the Sanderson & Porter report of $749,850.92.

The New Mexico Power Company was ordered to make adjustments in its accounts by writing off $40,596.55 to bring its report in conformity with the findings of the Federal Power Commission. The New Mexico Power Company took exception to the Federal Power Commission's order, but complied with the Commission's request as the amount was too small to be contested. The difference of $40,596.55 was made up largely of unrecorded retirements, writeups, plant acquisition adjustments, and transfers affecting common utility plant which had not been taken into the books of the company up to the time of the Federal Power Commission's examination of the company's records. The balance remaining in the accounts to be adjusted were disposed of in 1944, wiping out the entire amount of $40,596.55.

Under date of December 1, 1941, the New Mexico Public Service Commission issued General Order No. 7, adopting the National Association of Railroad & Utilities Commissioners' Uniform System of Accounts for Elec-

tric Utilities. Paragraph 5 of said order makes provision for all electric utilities operating in the state of New Mexico to file original cost studies and reclassification of accounts within two years after July 1, 1942. Subsequent to the effective date of General Order No. 7, the time for filing these reports was extended as a result of World War II as conditions warranted. In compliance with the Commission's General Order No. 7, the "respondent" employed the Cecil F. Elmes Organization of Chicago, Illinois, to bring the original cost study and reclassification of all property accounts up to December 31, 1944.

The Ceceil F. Elmes Organization, with the coöperation of "respondent's" forces and the Commission engineer, began the work of making a detailed study of "respondent's" records and vouchers as of June, 1944, of "respondent's" electric utility property in the Santa Fe Division, and this work was completed in May, 1945.

Subsequent to December 31, 1936, the date of the original cost study and reclassification of accounts as approved by the Federal Power Commission, "respondent" recorded additions and retirements in the company's records in keeping with the provisions of the Uniform System of Accounts prescribed by the Federal Power Commission up to and including December 31, 1944 (original cost, as used, being the cost at the time the property was first devoted to public use).

Under date of July 22, 1944, "respondent" filed a complete report of original cost and reclassification of accounts applicable to the electric utility property of the Santa Fe Division.

The report as filed established original cost of the electric utility property of the Santa Fe Division as of December 31, 1936, as approved by the Federal Power Commission, at $709,254.37. Net additions from January 1, 1937, to December 31, 1943, of electric utility property amounted to $241,210.08. This brings the total electric utility property up to December 31, 1943, to $950,464.45 before adjustment and $945,598.69 after adjustment. The adjustment amounting to $4,865.76 was made between the accounts of the electric department, the water department, and common utility property. Construction Work in Progress and Common Utility Plant applicable to the electric department as of December 31, 1943, amount to $16,657.01. Adding this amount to the adjusted original cost of electric utility property of $945,598.69 brings the total original cost of the electric department up to December 31, 1943, to $962,255.70, which amount was approved by the Commission under its Order No. 57 dated October 3, 1945, as the original cost of the electric utility property as of December 31, 1944.

Under date of July 2, 1945, "respondent" filed with the New Mexico Public Service Commission, in compliance with General Order No. 7 dated December 1, 1941, revised reports on reclassification of accounts and original cost of electric plant and property for the Santa Fe Division, bringing the report up to December 31, 1944, as follows:

Plant and Property 12-31-43	$962,255.70
Additions, year 1944	11,298.66
Total Electric Plant and Property 12-31-44	$973,554.36

The original cost to "respondent" of electric utility plant and property of the Santa Fe Division as of December 31, 1944, as reflected by "respondent's" books and the original cost report and reclassification of accounts as filed with the Commission is in agreement with the examination and check made by the Elmes Organization and the Commission's staff.

"Respondent" filed on July 2, 1945, valuation report setting forth the original cost and the reproduction cost new depreciated summarizing the rate base for the electric utility property of the Santa Fe Division as follows:

SUMMARY RATE BASE
Electric Department

	Original Cost	Reproduction Cost—New
Plant and Property 12-31-43	$962,255.70	$1,171,947.10
Additions—Year 1944	11,298.66	11,298.66
Total Plant and Property 12-31-44	$973,554.36	$1,183,245.76
Less:		
Depreciation	*242,936.86	141,989.49
Net Plant and Property 12-31-44	$730,617.50	$1,041,256.27
Less:		
Contributions for Extensions	8,279.37	8,279.37
Total	$722,338.13	$1,032,976.90
Add:		
Cash Working Capital	32,100.00	32,100.00
Cash Working Capital Federal Taxes	45,000.00	45,000.00
Cash Deposits	500.00	500.00
Materials and Supplies	17,000.00	17,000.00
Estimated Capital Expenditures 1945	25,228.00	25,228.00
Going Concern Value	200,000.00	200,000.00
Total Value for Rate Base as of 12-31-44	$1,042,166.13	$1,352,804.90

*Amount of Depreciation adjusted by $86,672.80.

The above computations have been made in keeping with § 26, Chap 84 of the Laws of 1941.

[1] Sworn testimony as to the manner of making the original cost study and reproduction cost appraisal was heard by the Commission. Testimony was introduced to the effect that no physical inventory had been taken of the electric utility property of the Santa Fe Division of the New Mexico Power Company, but that the reproduction cost valuation had been determined from a weighted average of the Las Vegas Light & Power Company, the Deming Ice and Electric Company, and the Albuquerque Gas and Electric Company. It was admitted that the three properties were not alike as to composition or age, as Las Vegas Light and Power Company does not have any transmission system, but that Deming and Albuquerque do. The distribution system at Las Vegas is quite simple compared with the complicated distribution at Albuquerque and the irrigation at Deming plus the local distribution system. The time available and the additional expense involved to make an inventory for reproduction cost new did not seem warranted. Therefore, a shortcut was taken by taking a weighted average of the three companies referred to, which "respondent"

testified was a fair average for reproduction cost.

From such testimony, the Commission, after careful consideration, has concluded that the reproduction cost appraisal presented to the Commission is highly speculative, but has given it such consideration as it could for purposes of comparison in arriving at, in its judgment, the fair value of the property.

[2] The making of the original cost study was checked by the Commission's staff from time to time, and the Commission and staff are satisfied that the conclusions arrived at for such studies are substantially accurate, and the Commission has given that testimony great weight and consideration in arriving at its conclusion.

[3, 4] From all of the testimony and evidence in the record, the Commission has concluded and finds that the fair value of "respondent's" electric utility property, Santa Fe Division, is $805,852.13, after deducting Contributions in Aid of Construction and Accrued Reserve for Depreciation as of December 31, 1944.

Further summarizing the conclusion of the Commission, the fair value as determined by the Commission may be tabulated as follows:

Total Electric Plant and Property in Service (Original Cost) 12-31-44		$973,554.36
Less:		
Contributions in Aid of Construction	$8,279.37	
Accrued Reserve for Depreciation	242,936.86	
Total Deductions		251,216.23
Net Electric Plant		$722,338.13
Add:		
Working Capital		20,064.00
Materials and Supplies		14,772.00
Allowance for Reproduction Cost as a going concern and other elements of value recognized by the laws of the land		48,678.00
Total Valuation for Rate Base		$805,852.13

In arriving at the fair value of "respondent's" electric utility property as of December 31, 1944, of $805,852.13, the Commission finds that the original cost of "respondent's" property is $973,554.36.

The Commission finds that Contributions in Aid of Construction, amounting to $8,279.37, is a legitimate deduction from the "original cost" of the property and has therefore deducted this amount.

The Commission finds the accrued depreciation of "respondent's" electric utility property applicable to the Santa Fe Division, to adequately cover obsolescence or functional as well as physical depreciation, is $242,936.91. This amount is considered proper and reasonable.

"Respondent's" books as of December 31, 1944, reflect accrued reserve for depreciation of the electric utility property of the Santa Fe Division as $329,609.71. The difference in overaccrual of depreciation in the amount of $86,672.80 will be disposed of later in the Commission's order. The Commission further finds that the amount of $242,936.91, representing accrued reserve for depreciation applicable to the electric utility property of the Santa Fe Division, is a proper deduction from the gross cost of said property in the rate base determination.

[5] The record discloses that respondent has followed a consistent ac-

counting method in recording the annual and accrued depreciation. The amounts have been determined by the provisions of "respondent's" indenture of mortgage which require the accruing of depreciation on the basis of 15 per cent of "respondent's" gross revenues less maintenance. The testimony of the Commission's staff is to the effect that annual accruals have been, during the period of World War II, in excess of actual requirements having in view the economic life of the property as governed by such elements of depreciation as wear, decay, inadequacy, and obsolescence. There is no dispute that these amounts have been more than sufficient for the restoration of the capital investment over the life of the property.

The Commission finds that the present method of accruing depreciation works a hardship on consumers as well as "respondent," and that the requirements of the indenture of mortgage of "respondent" are unfair, unjust, and unreasonable. The Commission feels that this condition should be remedied at the earliest possible date by discontinuing the present method of depreciation accruals and the accruing of depreciation on a term-life or a straight-line basis. Provisions for this change will be covered later on in the Commission's order.

In support of the Commission's findings in the matter of depreciation, the following quotes are taken from Supreme Court decisions:

"Before coming to the question of profit at all the company is entitled to earn a sufficient sum annually to provide not only for current repairs but for making good the depreciation and replacing the parts of the property when they come to the end of their life. The company is not bound to see its property gradually waste, without making provision out of earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired, so that at the end of any given term of years the original investment remains as it was at the beginning. It is not only the right of the company to make such a provision but it is its duty to its bond and stockholders, and, in the case of a public service corporation at least. Its plain duty to the public." Knoxville v. Knoxville Water Co. (1909) 212 US 1, 13, 53 L ed 371, 29 S Ct 148.

"It was settled by Knoxville v. Knoxville Water Co. (1909) 212 US 1, 53 L ed 371, 29 S Ct 148, that every public utility must, at its peril, provide an adequate amount to cover depreciation." Mr. Justice Brandeis dissenting in Pacific Gas & E. Co. v. San Francisco, 265 US 403, 423, 68 L ed 1075, PUR1924D 817, 833, 44 S Ct 537.

"A depreciation charge resembles a life insurance premium. The depreciation reserve, to which it is credited, supplies insurance for the plant against its inevitable decadence, as the life insurance reserve supplies the fund to meet the agreed value of the loss of human life." Mr. Justice Brandeis dissenting in Pacific Gas & E. Co. v. San Francisco *supra*, 265 US at p. 423, PUR1924D at p. 834.

"The amount to be set aside for future depreciation will depend upon the character and probable life of the property and the method adopted in the past to preserve the property." Lincoln Gas & E. L. Co. v. Lincoln

(1912) 223 US 349, 364, 56 L ed 466, 32 S Ct 271.

A Commission's allowance for depreciation is a finding of fact. Georgia R. & Power Co. v. Railroad Commission, 262 US 625, 67 L ed 1144, PUR1923D 1, 43 S Ct 680.

[6–8] "Respondent" claims the following amounts for Working Capital:

Cash for Operating Expenses and Prepayments	$32,100.00
Cash for Federal Taxes	45,000.00
Cash for Bank Balances	500.00
Materials and Supplies	17,000.00
Estimated Capital Expenditures Year 1945	25,228.00
Total	$119,828.00

The Commission is of the opinion that Working Capital in the amount of $119,828 is excessive and should be reduced to $34,836. This sum includes for the "respondent" $16,736 of Cash for Operation and Maintenance Expenses, $500 for Petty Cash and Cash for Minimum Bank Balances, $2,828 for Prepayments, and $14,772 for Materials and Supplies.

The Commission finds that the allowance for Operating Expenses and Maintenance of $16,736 is proper and reasonable. This amount is arrived at by taking one-eighth of the total Operating Expenses and Maintenance Charges for the year 1944 which is the equivalent of forty-five days of such charges.

The Commission finds and has allowed $500 to cover cash requirements for Petty Cash purposes and Cash for Minimum Bank Balances as the proper and reasonable amount for this item.

"Respondent's" claim of $5,000 for cash to cover Federal Taxes is disallowed, for the reason it is considered unjust and unreasonable. Federal Taxes are paid in arrears, and such payments are made from current revenues obtained from routine operations to the extent necessary to meet such payments without calling upon special funds. To allow "respondent's" claim would result in a depreciation of earnings on plant investments and revenues received for services rendered.

"Respondent's" claim of $25,229 for Estimated Capital Expenditures for 1945 is rejected for the reason such expenditures are of a routine character and "Respondent" anticipates receiving immediately revenues on such expenditures from new customers.

The Commission has allowed $14,772 instead of $17,000 for Materials and Supplies (the amount reflected by the inventory and "respondent's" books as of December 31, 1944).

The Commission has allowed $2,828 for Prepayments, the amount of such items as of December 31, 1944.

[9] The Commission rejects "respondent's" claim for Going Concern Value of $200,000. "Respondent" submitted testimony and evidence to the effect that for a lot of years the company did not get any return or reasonable return on their investment due to the small number of consumers connected with the system. There was nothing of a tangible nature submitted in support of this contention or figures presented to show the extent of losses or inadequate earnings the company had suffered.

The Supreme Court has held in similar cases that early losses and development costs are not to be included in arriving at the rate base value. Galveston Electric Co. v. Galveston,

258 US 388, 66 L ed 678, PUR 1922D 159, 42 S Ct 351.

As a further reason for disallowing the item of Going Concern Value, we quote from the court:

". . . it is not to be presumed, without proof, that a company is under the necessity of making up losses and expenditures incidental to the experimental stage of its business." Des Moines Gas Co. v. Des Moines, 238 US 153, 59 L ed 1244, PUR 1915D 577, 585, 35 S Ct 811.

Allowance for "Good Will," while not claimed by "respondent," is closely allied with Going Concern Value. The Commission has considered this item in arriving at the rate base value of "respondent's" property on the basis of court decisions involving this item. (Willcox v. Consolidated Gas Co. [1909] 212 US 19, 52, 53 L ed 382, 29 S Ct 192, 48 LRA(NS) 1134, 15 Ann Cas 1034; Cedar Rapids Gas Light Co. v. Cedar Rapids [1912] 223 US 665, 669, 56 L ed 594, 32 S Ct 389; Des Moines Gas Co. v. Des Moines, 238 US 153, 169, 59 L ed 1244, PUR1915D 577, 35 S Ct 811; Galveston Electric Co. v. Galveston, 258 US 388, 66 L ed 678, PUR1922D 159, 42 S Ct 351.)

[10] The Commission, in its determination of the fair value of "respondent's" property, has included an item of $48,678, which is the Commission's estimate of the difference in the actual value of the property as of December 31, 1944, and its depreciated original cost. This item is evidence of the consideration the Commission has given to "respondent's" claim for reproduction cost as a going concern and other elements of value recognized by the laws of the land. This amount is considered by the Commission as just and reasonable and is within the exercise of its powers and jurisdiction in its ascertainment of the fair value of "respondent's" property (§ 26, Chap 64, Laws of 1941).

This section requires little observation. Certainly, if the legislature contemplated that the original cost basis should be used, it would have been needless to charge upon the Commission the duty of ascertaining the reasonable value of the property; instead, the legislature would have charged the Commission with the duty to ascertain the original cost of all the property. This the legislature did not do.

In further support of the Commission's findings, reference is made to the following Supreme Court decisions, all of which have been carefully considered in arriving at a decision as to the value of "respondent's" property for rate base:

Fair Value. The rule of Smyth v. Ames (1898) 169 US 466, 547, 42 L ed 819, 18 S Ct 418; Knoxville v. Knoxville Water Co. (1909) 212 US 1, 9, 53 L ed 371, 29 S Ct 148; Houston v. Southwestern Bell Teleph. Co. 259 US 318, 324, 66 L ed 961, PUR 1922D 793, 42 S Ct 486; McCardie v. Indianapolis Water Co. 272 US 400, 410, 71 L ed 316, PUR1927A 15, 47 S Ct 144; Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 US 679, 687, 67 L ed 1176, PUR 1923D 11, 43 S Ct 675; St. Louis & O'Fallon R. Co. v. United States, 279 US 461, 73 L ed 798, PUR1929C 161, 49 S Ct 384.

Prudent Investment. Missouri ex rel. Southwestern Bell Teleph. Co. v.

Public Service Commission, 262 US 276, 289, et seq. 67 L ed 981, PUR 1923C 193, 43 S Ct 544, 31 ALR 807; San Diego Land & Town Co. v. Jasper (1903) 189 US 439, 442, 443, 47 L ed 892, 23 S Ct 571.

Original Cost. Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736; Driscoll v. Edison Light & P. Co. (1939) 307 US 104, 122, 83 L ed 1134, 28 PUR(NS) 65, 59 S Ct 715; Panhandle Eastern Pipeline Co. v. Federal Power Commission (1945) 324 US 635, 89 L ed 1241, 58 PUR (NS) 100, 65 S Ct 821; Federal Power Commission v. Hope, Nat. Gas Co. (1944) 320 US 591, 88 L ed 333, 51 PUR(NS) 193, 64 S Ct 281; Colorado Interstate Gas Co. v. Federal Power Commission (1945) 324 US 581, 89 L ed 1206, 58 PUR(NS) 65, 65 S Ct 829.

The evidence in the record shows that "respondent's" claimed valuation as of December 31, 1944, for rate base, on the basis of original cost depreciated, is $1,042,166.13; and on the basis of reproduction cost new depreciated, $1,352,804.90; the difference in original cost over reproduction cost being $310,638.77. The valuation determined by the Commission of $805,852.13 is $236,314 less than "respondent's" claim for original cost value and $546,952.77 less than the reproduction cost value.

Water Department—Santa Fe Division, New Mexico Power Company

Under date of February 23, 1943, the Commission issued General Order No. 11, adopting the National Association of Railroad & Utilities Commissioners' Uniform System of Accounts for Water Utilities. Paragraph 5 of said order makes provision for all water utilities operating in the state of New Mexico to file Original Cost Studies and Reclassification of Accounts within two years after July 1, 1943.

In compliance with the Commission's General Order No. 11, the "respondent" employed the Cecil F. Elmes Organization of Chicago, Illinois, to do four things, as follows:

1. Make a physical inventory of respondent's water utility property situate in the city of Santa Fe and territory adjacent thereto;

2. Prepare an original cost study and reclassification of all property accounts;

3. Prepare a report on reproduction cost new;

4. Prepare a depreciation study.

The Cecil F. Elmes Organization, with the coöperation of "respondent's" forces and the Commission's engineer, began the work of making a detailed inventory as of June, 1944, of "respondent's" water utility property in the city of Santa Fe, New Mexico, and territory adjacent thereto, which was completed in May, 1945.

Maps were prepared spotting the location of dams, reservoirs, gate valves, distribution, and transmission equipment from company records, and in so far as possible, the date of installation of each item of equipment was determined. Similar data was developed for land and land rights, buildings, and general equipment, and intangibles.

Concurrently with the preparation of the inventory of the Elmes Organization, the "respondent" and Com-

mission accountant analyzed the records of the "respondent" to determine the original cost of the various units of equipment (original cost, as used, being the cost at the time the property was first devoted to public use).

From these data and the inventory, the original cost and the reproduction cost new less depreciation of the water utility's total property applicable to the Santa Fe Division were determined as of December 31, 1943. Subsequent to 1943, "respondent's" records were kept on a continuous fixed capital record basis, and by adding net property additions, the original cost and the reproduction cost new depreciated were determined as of December 31, 1944, reproduction cost being computed on the basis of reproducing the same plant at one impulse at prevailing prices of labor, materials, and overheads as of December, 1943.

"Respondent" filed with the Commission on July 2, 1945, the following reports in book form, detailing and summarizing the results of the inventory and appraisal of the Elmes Organization of "respondent's" water utility property, Santa Fe Division:

1. Reproduction Cost Less Depreciation, as of December 31, 1943.

2. Inventory of Physical Property as of December 31, 1943, showing "Original Cost and Reproduction Cost New."

The "Reproduction Cost New Less Depreciation" shows a value at December 31, 1943, as follows:

Reproduction Cost New 12-31-43	$2,243,556.50
Less Depreciation	184,374.50
Reproduction Cost New Less Depreciation	$2,059,182.00

The "Original Cost" report shows the value as of December 31, 1943, as follows:

Original Cost 12-31-43	$1,604,491.65
Difference between Reproduction Cost New Undepreciated and Original Cost	$639,064.65

The actual cost to "respondent" of water utility plant and property, Santa Fe Division, as of December 31, 1943, as reflected by "respondent's" books is $1,604,491.65. The "Original Cost" report as filed by "respondent" in the amount of $1,604,491.65 was approved under Commission's Order No. 56 dated October 3, 1945.

"Respondent" filed, on July 2, 1945, Valuation Report summarizing the rate base for the water utility property of the Santa Fe Division, as follows:

SUMMARY RATE BASE

Water Department

	Original Cost	Reproduction Cost New
Plant and Property 12-31-43	$1,604,491.65	$2,243,556.50
Additions—Year 1944	17,121.16	17,121.16
Total Plant and Property 12-31-44	$1,621,612.81	$2,260,677.66
Less: Depreciation	93,549.63	184,374.50
Net Plant and Property 12-31-44	$1,528,063.18	$2,076,303.16
Less: Contributions for Extensions	73,189.61	73,189.61
Total	$1,454,873.57	$2,003,113.55

	Original Cost	Reproduction Cost New
Add:		
Cash Working Capital	13,300.00	13,300.00
Cash Working Capital Federal Taxes	15,000.00	15,000.00
Cash Deposits	500.00	500.00
Materials and Supplies	10,000.00	10,000.00
Estimated Capital Expenditures 1945	77,440.00	77,440.00
Going Concern Value	100,000.00	100,000.00
Total Value for Rate Base as of 12-31-44	$1,671,113.57	$2,219,353.55

The above computations have been made in keeping with § 26, Chap 84 of the Laws of 1941.

Sworn testimony as to the manner of making the original cost inventory and the reproduction cost appraisal was heard by the Commission. From such testimony, the Commission, after careful consideration, has concluded that the reproduction cost study and appraisal presented by the Elmes Organization is highly speculative, but has given it such consideration as it could for purposes of comparison in arriving at, in its judgment, the fair value of the property.

The making of the original cost study was checked by the Commission's staff from time to time, and the Commission and staff are satisfied that the conclusions arrived at for such studies are substantially accurate, and the Commission has given that testimony great weight and consideration in arriving at its conclusion.

From all of the testimony and evidence in the record, the Commission has concluded and finds that the fair value of "respondent's" water utility property is $1,557,109.57, after deducting contributions in aid of construction and accrued reserve for depreciation as of December 31, 1944.

Further summarizing the conclusion of the Commission, the fair value as determined by the Commission may be tabulated as follows:

Total water plant and property in service (Original Cost) 12-31-44		$1,621,612.81
Less:		
Contributions in Aid of Construction	$73,189.61	
Accrued Reserve for Depreciation	93,549.63	
Total Deductions		166,739.24
Net Electric Plant		$1,454,873.57
Add:		
Working Capital		8,747.00
Materials and Supplies		12,389.00
Allowance for Reproduction Cost as a going concern and other elements of value recognized by the laws of the land		81,100.00
Total Valuation for Rate Base		$1,557,109.57

In arriving at the fair value of "respondent's" water utility property as of December 31, 1944, of $1,557,109.57, the Commission finds that the Original Cost of "respondent's" water utility property is $1,621,612.81.

The Commission finds that Contributions in Aid of Construction, amounting to $73,189.61, is a legitimate deduction from the "Original Cost" of the property and have therefore deducted this amount.

The Commission finds that the accrued depreciation recorded on "respondent's" books as of December 31, 1944, amounting to $93,549.63, should be deducted from the gross cost in the rate base determination. The record discloses that respondent has followed a consistent accounting method in recording the annual and accrued depreciation. The amounts

have been determined by the provisions of "respondent's" indenture of mortgage which require the accruing of depreciation on the basis of 8 per cent of "respondent's" gross revenues less maintenance. The testimony of the Commission's staff is to the effect that annual accruals have been, during the period of World War II, in excess of actual requirements having in view the economic life of the property as governed by such elements of depreciation as wear, decay, inadequacy, and obsolescence. There is no dispute that these amounts have been more than sufficient for the restoration of the capital investment over the life of the property.

The Commission finds that the present method of accruing depreciation works a hardship on consumers as well as "respondent," and that the requirements of the indenture of mortgage of "respondent" are unfair, unjust, and unreasonable. The Commission feels that this condition should be remedied at the earliest possible date by discontinuing the present method of depreciation accruals and the accruing of depreciation on a term-life or a straight-line basis. Provisions for this change will be covered later on in the Commission's order.

In support of the Commission's findings in the matter of depreciation, the following quotes are taken from Supreme Court decisions: [Quotations omitted as they are included in report on valuation of electric property, ante.]

"Respondent" claims the following amounts for Working Capital:

Cash for Operating Expenses and Prepayments	$13,300.00
Cash for Federal Taxes	15,000.00
Cash for Bank Balances	500.00
Materials and Supplies	10,000.00
Estimated Capital Expenditures Year 1945	77,440.00
Total	$116,240.00

The Commission is of the opinion that Working Capital in the amount of $116,240 is excessive and should be reduced to $21,136. This sum includes for the "respondent" $7,033 of Cash for Operation and Maintenance Expenses, $500 for Petty Cash, and Cash for Minimum Bank Balances, $1,214 for Prepayments, and $12,389 for Materials and Supplies.

The Commission finds that the allowance for Operating Expenses and Maintenance of $7,033 is proper and reasonable. This amount is arrived at by taking one-eighth of the total Operating Expenses and Maintenance Charges for the year 1944 which is the equivalent of forty-five days of such charges.

The Commission finds and has allowed $500 to cover cash requirements for Petty Cash purposes and Cash for Minimum Bank Balances as the proper and reasonable amount for this item.

"Respondent's" claim of $15,000 for cash to cover Federal Taxes is disallowed, for the reason it is considered unjust and unreasonable. Federal Taxes are paid in arrears, and such payments are made from current revenues obtained from routine operations to the extent necessary to meet such payments without calling upon special funds. To allow "respondent's" claim would result in a duplication of earnings on plant investments

and revenues received for services rendered.

"Respondent's" claim of $77,440 for Estimated Capital Expenditures for 1945 is rejected for the reason such expenditures are of a routine character and "respondent" anticipates receiving immediately revenues on such expenditures from new customers.

The Commission has allowed $12,389 instead of $10,000 for Materials and Supplies (the amount reflected by the inventory and "respondent's" books as of December 31, 1944).

The Commission has allowed $1,214 for Prepayments, the actual amount of such items as of December 31, 1944.

The Commission rejects "respondent's" claim for Going Concern Value of $100,000. "Respondent" submitted testimony and evidence to the effect that for a lot of years the company did not get any return or reasonable return on their investment due to the small number of consumers connected with the system. There was nothing of a tangible nature submitted in support of this contention or figures presented to show the extent of losses or inadequate earnings the company had suffered.

The Supreme Court has held in similar cases that early losses and development costs are not to be included in arriving at the rate base value. (Galveston Electric Co. v. Galveston, 258 US 388, 66 L ed 678, PUR1922D 159, 42 S Ct 351.)

As a further reason for disallowing the item of Going Concern Value, we quote from the court:

". . . it is not to be presumed, without proof, that a company is under the necessity of making up losses and expenditures incidental to the experimental stage of its business." Des Moines Gas Co. v. Des Moines, 238 US 153, 166, 59 L ed 1244, PUR 1915D 577, 585, 35 S Ct 811.

Allowance for "Good Will," while not claimed by "respondent," is closely allied with Going Concern Value. The Commission has considered this item in arriving at the rate base value of "respondent's" property on the basis of court decisions involving this item. (Willcox v. Consolidated Gas Co. [1909] 212 US 19, 52, 53 L ed 382, 29 S Ct 192, 48 LRA(NS) 1134, 15 Ann Cas 1034; Cedar Rapids Gas Light Co. v. Cedar Rapids [1912] 223 US 655, 669, 56 L ed 594, 32 S Ct 389; Des Moines Gas Co. v. Des Moines, *supra*, 238 US at p. 169, PUR1915D at p. 588; Galveston Electric Co. v. Galveston, *supra*.)

The Commission, in its determination of the fair value of "respondent's" property, has included an item of $81,100, which is the Commission's estimate of the difference in the actual value of the property as of December 31, 1944, and its depreciated original cost. This item is evidence of the consideration the Commission has given to "respondent's" claim for reproduction cost as a going concern and other elements of value recognized by the laws of the land. This amount is considered by the Commission as just and reasonable and is within the exercise of its powers and jurisdiction in its ascertainment of the fair value of "respondent's" property. (Section 26, Chap 84, Laws of 1941.)

This section requires little observation. Certainly, if the legislature contemplated that the original cost basis

should be used, it would have been needless to charge upon the Commission the duty of ascertaining the reasonable value of the property; instead, the legislature would have charged the Commission with the duty to ascertain the original cost of all the property. This the legislature did not do.

In further support of the Commission's findings, reference is made to the following Supreme Court decisions, all of which have been carefully considered in arriving at a decision as to the value of "respondent's" property for rate base: [References omitted as they are the same as those included in report on valuation of electric property, ante.]

The evidence in the record shows that "respondent's" claimed valuation as of December 31, 1944, for rate base, on the basis of original cost depreciated, is $1,671,113.57; and on the basis of reproduction cost new depreciated, $2,219,353.55; the difference in original cost over reproduction cost being $548,239.98. The valuation determined by the Commission of $1,557,109.57 is $114,004 less than "respondent's" claim for original cost value and $662,243.98 less than the reproduction cost value.

Summarizing Conclusions with Respect to Electric and Water Departments of the Santa Fe Division of the New Mexico Power Company

[11] Testimony and evidence was submitted to the effect that the Santa Fe Water and Light Company (predecessor company) was in receivership in the United States district court, Albuquerque, New Mexico, in 1925 and 1926, at the time of its acquisition by Federal Light and Traction Company, later merged and consolidated with the New Mexico Power Company, and that its acquisition and the circumstances of that acquisition were guided and controlled by United States Judge Orie L. Phillips of that court. The electric and water properties of the Santa Fe Water and Light Company were appraised at that time by a competent engineer appointed by the court; its books were audited by a certified public accountant appointed by the court; and the acquisition cost was made in the light of that appraisal and the book records of the company.

The electric and water departments of the Santa Fe Water and Light Company and its predecessor companies have been jointly owned since about 1900. The water department for many years prior to the acquisition date (May 31, 1926) was unprofitable and was being carried by the electric department. In 1925, the city of Santa Fe faced a water shortage which threatened to become acute. There was public agitation for the construction of additional reservoir facilities at great expense, which would make the already lean water department that much leaner. It was evident that neither the city nor the company could furnish the funds for such new construction. Santa Fe Water and Light Company was placed in receivership on April 1, 1925, and its affairs thereafter were administered by Federal Judge Orie L. Phillips of the United States district court of New Mexico.

The court recognized the gravity of the situation from the public point of view, proclaimed a public emergency, and insisted that the electric depart-

ment be subordinated to the more urgent need for water, and stated that "a serious and dangerous crisis confronts the city of Santa Fe as to its water supply and that steps should be taken to avert the catastrophe."

Thereafter, various court orders were issued, limiting the use of water, ordering meters for consumers, ordering that the rivers be patrolled, limiting irrigation, prohibiting the use of water for washing automobiles, etc.

The then owners of the Santa Fe Water and Light Company assured the court that they were willing to give up and dispose of the property, desiring only to get a fair price for it. Judge Phillips approved of this and admitted he could get a high price for the electric utility if separated from the water department. He ruled, however, as a matter of public policy, this must not be done.

On November 2, 1925, Judge Phillips called a public meeting of the mayor and city council together with the influential citizens, in his courtroom, and requested the mayor and council to draft a prospective ordinance for the combined water and electric departments, to be accepted by any bidder for the utilities. He insisted as a matter of public policy that he could not consider any offer for the purchase of the electric utility alone. He insisted that the combined properties go to qualified operators who would not only operate the water department in addition to the electric department, but would also agree to construct a reservoir and additional water service facilities to take care of the future growth of the city. He stated that the cost of this reservoir had been estimated by the state engineer at $361,000, and requested the city to include in its ordinance a requirement for a performance bond of $50,000 as a guaranty of promptly constructing this reservoir. He announced that he had several bidders for the property, including by name the Federal Light and Traction Company.

On December 22, 1925, a franchise drawn by the city of Santa Fe along the above lines was awarded to John David Bowles, chief engineer for the Federal Light and Traction Company. Federal Judge Phillips was present at the meeting of the city council which awarded this franchise, and expressed his concurrence in the action taken. The franchise was accepted by the company on February 19, 1926, at which time the company filed its performance bond in the amount of $50,000 for the construction of the Granite Point reservoir.

In a separate memorandum, there are set forth excerpts from the local newspaper in Santa Fe during the period April 1, 1925, to February 19, 1926, outlining in detail the events connected with the acquisition of this property.

Electric and Water Departments Combined

From the above historical summary and from the more detailed memorandum referred to above, the following observations are made:

(a) The transfer of the properties of Santa Fe Water and Light Company to New Mexico Power Company was carried out under the guidance and control of the United States district court;

(b) It was a cardinal point with

the court as a matter of paramount public interest that the two utilities must be bought as one in the negotiations;

(c) The water department could neither support itself nor render adequate public service as of the transfer date; neither could it justify the influx of urgently needed new capital thereto;

(d) The court insisted that in the joint franchise to be granted to the incoming utility company, the electric department be permitted to enjoy earnings adequate to get a fair combined return from both departments.

The water department at Santa Fe at acquisition date was not self-supporting, and this fact was fully understood and appreciated by the court. It is not self-supporting today, at which time a similar condition exists, and this unprofitable department again requires the investment of new money to augment and improve water service to the public. Any analysis of the situation at Santa Fe would be meaningless and distorted unless this condition of affairs is taken into account.

The Santa Fe Water and Light Company was merged into and consolidated with the New Mexico Power Company as of May 31, 1936. The balance sheet as of that date shows the following items with reference to capitalization:

Common Stock	$50,000.00
First Mortgage Bonds 5%	90,000.00
First Consolidated Mortgage Bonds 4%	209,500.00
Income Bonds 7%	173,500.00
First Mortgage Office Building, 8%	8,000.00
New York Notes, 6%	40,000.00
Total Capitalization	$571,000.00

Plant and Property Investments on May 31, 1926, were $764,340.28, and Accrued Reserve for Depreciation recorded on the books of the company at $163,805.25, leaving the Net Plant and Property in Service amounting to $600,535.03, a difference of $29,000 plus. Write-offs in excess of $35,000 were made by "respondent" at the request of the Federal Power Commission after its examination of the 2D report filed by "respondent" with the Commission the latter part of 1939, which more than offset this difference.

Evidence was also submitted in the nature of an exhibit comprising a copy of the Franchise Ordinance No. 500 passed, adopted, and approved December 22, 1925, by the city council of Santa Fe, New Mexico, which stipulates the terms and conditions under which "respondent" is required to operate the electric and water departments for a period of twenty-five years. Section 18 of the said ordinance reads as follows:

"Section 18. It is provided and agreed that the rates herein set forth, both for water and electricity, after the initial period of five years and thereafter at 5-year intervals shall at all times during the term of this franchise be subject to revision and readjustment upon application of either the city or the grantee, his successors and assigns, by a competent disinterested arbitrator to be appointed by the then judge or judges of the United States district court for the district of New Mexico, such revised rates to be sufficient to give annually a net return of not less than 8 per cent, after a proper allowance for depreciation, on the properties of the grantee, his successors and assigns, at the time

of the revision, using the Thomas appraisal of June 30, 1925, plus any additions and betterments as a rate base. Each party shall bear one-half of the expense of such revision and readjustment of rates. The method of revision and readjustment herein provided for shall not be construed to prevent revision and readjustment of rates by any other lawful tribunal authorized by the laws of the state of New Mexico then in force to fix, adjust, or determine the same."

From the foregoing history and separate findings of the Commission relating to the electric and water departments of "respondent," the Commission finds that any separation of electric and water departments for rate base purposes would not be in the public interest.

"Respondent" filed under date of July 2, 1945, a letter summarizing the reproduction cost new for establishing a rate base as of December 31, 1944, segregating the electric and water departments, and totaled them as a combined unit as follows:

SANTA FE DIVISION
Summary Rate Base
Reproduction Cost New

	Water Department	Electric Department	Total
Plant and Property 12-31-43	$2,243,556.50	$1,171,947.10	$3,415,503.60
Additions Year 1944	17,121.16	11,298.66	28,419.82
Total Plant and Property 12-31-44	$2,260,677.66	$1,183,245.76	$3,443,923.42
Less:			
Depreciation	184,374.50	141,989.49	326,363.99
Net Plant and Property 12-31-44	$2,076,303.16	$1,041,256.27	$3,117,559.43
Less:			
Contributions for Extensions	73,189.61	8,279.37	81,468.98
Total	$2,003,113.55	$1,032,976.90	$3,036,090.45
Add:			
Cash Working Capital	13,300.00	32,100.00	45,400.00
Cash Working Capital Federal Taxes	15,000.00	45,000.00	60,000.00
Cash Deposits	500.00	500.00	1,000.00
Materials and Supplies	10,000.00	17,000.00	27,000.00
Estimated Capital Expenditures 1945	77,440.00	25,228.00	102,668.00
Going Concern Value	100,000.00	200,000.00	300,000.00
Total Value for Rate Base as of 12-31-44	$2,219,353.55	$1,352,804.90	$3,572,158.45

"Respondent" filed under date of July 18, 1945, a letter summarizing the original cost for establishing a rate base as of December 31, 1944, segregating the electric and water departments, and totaled them as a combined unit as follows:

SANTA FE DIVISION
Summary Rate Base
Original Cost

	Water Department	Electric Department	Total
Plant and Property 12-31-43	$1,604,491.65	$962,255.70	$2,566,747.35
Additions—Year 1944	17,121.16	11,298.66	28,419.82
Total Plant and Property 12-31-44	$1,621,612.81	$973,554.36	$2,595,167.17
Less:			
Depreciation	93,549.63	*242,936.86	336,486.49
Net Plant and Property 12-31-44	$1,528,063.18	$730,617.50	$2,258,680.68
Less:			
Contributions for Extensions	73,189.61	8,279.37	81,468.98
Total	$1,454,873.57	$722,338.13	$2,177,211.70
Add:			
Cash Working Capital	13,300.00	32,100.00	45,400.00
Cash Working Capital Federal Taxes	15,000.00	45,000.00	60,000.00
Cash Deposits	500.00	500.00	1,000.00
Materials and Supplies	10,000.00	17,000.00	27,000.00
Estimated Capital Expenditures 1945	77,440.00	25,228.00	102,668.00
Going Concern Value	100,000.00	200,000.00	300,000.00
Total Value for Rate Base as of 12-31-44	$1,671,113.57	$1,042,166.13	$2,713,279.70

*Amount of Depreciation adjusted by $86,672.80.

The Commission's staff submitted its report covering the original cost of "respondent's" property for rate base purposes, segregating the electric and water departments, and totaled them as a combined unit as follows:

SANTA FE DIVISION
Summary Rate Base
Original Cost

	Water Department	Electric Department	Total
Plant and Property 12-31-43	$1,604,491.65	$962,255.70	$2,566,747.35
Additions—Year 1944	17,121.16	11,296.66	28,419.82
Total Plant and Property 12-31-44	$1,621,612.81	$973,554.36	$2,595,167.17
Less:			
Accrued Depreciation	93,549.63	242,936.86	336,486.49
Net Plant and Property 12-31-44	$1,528,063.18	$730,617.50	$2,258,680.68
Less:			
Contributions in Aid of Construction	73,189.61	8,279.37	81,468.98
Total Plant and Property 12-31-44	$1,454,873.57	$722,338.13	$2,177,211.70
Add:			
Cash Working Capital	8,747.00	20,064.00	28,811.00
Materials and Supplies	12,389.00	14,772.00	27,161.00
Allowance for Reproduction Cost as a going concern and other elements of value recognized by the laws of the land	81,100.00	48,678.00	129,778.00
Total Valuation for Rate Base	$1,557,109.57	$805,852.13	$2,362,961.70

Since the findings of the Commission with respect to Contributions in Aid of Construction, Accrued Depreciation, Cash Working Capital, Ma-

terials and Supplies, Cash for Federal Taxes, Cash Deposits, Estimated Capital Expenditures for 1945, Going Concern Value, and Allowance for Reproduction Cost New as a Going Concern and Other Elements of Value Recognized by the Laws of the Land, have been treated separately for the electric and water departments above, any reference to the same items in the consolidated report would result in duplication. Comments respecting these items were, therefore, omitted in the findings of the Commission relating to the combined property, and any reference to the Commission's findings on said items should be reviewed in the treatment accorded to the electric and water departments separately.

The evidence in the record shows that "respondent's" claimed valuation as of December 31, 1944, for a rate base on the basis of Reproduction Cost New Depreciated, $3,572,158.45; the difference in Original Cost and Reproduction Cost being $858,878.75. The valuation as determined by the Commission of $2,362,961.70 is $350,318.00 less than "respondent's" claim for Original Cost value, and $1,209,196.75 less than the Reproduction Cost value.

The Commission therefore *orders*:

1. That the rate base of "respondent's" electric and water utility property, used and useful for rendering electric and water service in the Santa Fe division of the New Mexico Power Company, be and the same hereby is approved in the amount of $2,362,-961.70.

2. That this amount be and the same hereby is to be considered in the establishment of just and reasonable rates for the combined electric and water utility property and the rate of return on "respondent's" investment.

3. That "Respondent" dispose of the overaccrual of Depreciation of Electric Utility Plant in the amount of $86,672.80 by debiting Account 250, Reserve for Depreciation of Electric Plant, and crediting a similar amount to Account 271, Earned Surplus.

4. That "Respondent" adopt a straight-line method of depreciation and set up the necessary records by plant accounts for the electric and water utility property of the present accrued depreciation for each plant account on or before January 1, 1946.

5. That the depreciation records by plant accounts be so maintained that depreciation accruals added to and retirements charged against each account shall at all times reflect the true condition of the accrued depreciation account for both water and electric utility property as recorded in the summary records of "Respondent."

6. That the annual allowance for accrued depreciation of 2.66 per cent on the gross value of electric property and 1.35 per cent on the gross value of water property used and useful in rendering electric and water service on a straight-line basis is fair and reasonable. "Respondent" is ordered to set aside this amount annually until further ordered by the Commission.

7. That "Respondent" submit a certified copy of journal entry to the Commission within thirty days from the date of this order, certifying that the overaccrual of Depreciation of Electric Utility Plant has been disposed of in keeping with paragraph 3 of this order.

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

City of North Miami Beach, Florida

v.

Federal Water & Gas Corporation et al.

No. 11469
151 F2d 420
October 15, 1945

PETITION *for review of order of Securities and Exchange Commission exempting sale of stock in subsidiary of holding company from competitive bidding requirements; affirmed.*

Appeal and review, § 28.1 — Conclusiveness of findings — Securities and Exchange Commission — Exemption from competitive bidding.

1. A determination by the Securities and Exchange Commission that the sale by a holding company of stock in a subsidiary should be exempted from a requirement of competitive bidding should be upheld when it is not shown that the evidence fails to sustain the Commission's findings, since the statute authorizing review does not confer on the court any general supervision of the Commission or in any manner charge it with administering the act, but, on the contrary, provides that findings as to the facts, if supported by substantial evidence, shall be conclusive, p. 31.

Consolidation, merger, and sale, § 45.1 — Exemption from competitive bidding — Disposal of interest in subsidiary — Objection by municipality.

2. A municipality served by a gas utility was not shown to be aggrieved by an order of the Securities and Exchange Commission exempting from competitive bidding a sale of a holding company's stock in the operating company, where the municipality was permitted to intervene and was heard and the Commission, after canvassing the contention that competitive bidding was required in the public interest, reached the conclusion that the public interest and that of investors and consumers alike was better served by granting the exemption, p. 31.

APPEARANCES: Allen S. Hubbard, of New York city, and Forney Johnston, of Birmingham, Ala., for Federal Water & Gas Corporation; Roger S. Foster, Solicitor, Securities & Exchange Commission, Harry G. Slater, Special Counsel, Securities and Exchange Commission, and Robert N. Hislop, Attorney, Securities and Exchange Commission, all of Philadelphia, Pa., for Securities and Exchange Commission.

Before Sibley, Hutcheson, and Lee, Circuit Judges.

HUTCHESON, CJ.: Claiming under § 24(a) of the Public Utility Holding Company Act of 1935, 15 USCA § 79x(a) (the act) to be aggrieved by an order of the Commission

which approved Federal Water & Gas Corporation's declaration as to the sale proposed by it and granted it a Rule U–50 exception, petitioner comes here seeking to set the order aside and to obtain directions requiring competitive bidding. In connection with its petition and as a part of its effort to prevent the consummation of the proposed sale by Federal, the city applied for and obtained from one of the judges of this court an order staying the operation of the Commission's order until the further order of this court. Federal Water thereupon appeared by motion in this court to vacate the stay and affirm the Commission's order because the petition raises no substantial question for review, and the Commission joined Federal in support of this motion.

The motion set down for hearing, all parties appeared in open court and announced that the record had reached the court and that they were now prepared, with the consent of the court, to present the case on the merits. The consent was given, and the petition for review was argued and will be disposed of on its merits, without determination of the point made by Federal that a stay issued by one judge instead of by the court was both lacking in jurisdictional validity and was improvident.

Respondent, Federal Water and Gas Corporation (Federal), a registered public utility holding company, owns all of the common stock of Peoples Water & Gas Company (Peoples) which has senior securities outstanding in the hands of the public and is a subsidiary company of Federal as defined in the act. Peoples is a gas utility company owning and operating facilities for the manufacture and distribution of gas in the city of Miami Beach and surrounding communities, including petitioner, which is a small municipality of 2,000 inhabitants, and which furnishes only 800 out of the 18,000 customers of Peoples in Florida. In addition to these facilities, Peoples owns and operates water properties in the state of Oregon.

On February 10, 1943, the Commission, pursuant to § 11(b) (1) of the act, 15 USCA § 79k(b) (1), directed Federal, among other things, to divest itself of its interests in the Florida and Oregon properties of Peoples.[1] At the same time, the Commission approved a general proposal by Federal looking toward the required divestment,[2] but Federal's definitive divestment program was not presented to the Commission until the filing of the declaration which was the subject of the Commission's order in the instant case. In such declaration, Federal, invoking § 12(d), 15 USCA § 79l(d),[3] of the act, proposed to sell its holdings of the common stock of

[1] Holding Company Act Release No. 4113, 49 PUR(NS) 325.

[2] Such proposal was submitted to the Commission pursuant to the provisions of § 11(e) of the act, which permit companies subject to the act to submit voluntary plans for compliance with the requirements of § 11(b).

[3] "It shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to sell any security which it owns of any public-utility company, or any utility assets, in contravention of such rules and regulations or orders regarding the consideration to be received for such sale, maintenance of competitive conditions, fees and commissions, accounts, disclosure of interest, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder."

Peoples to R. M. Sheritt for $1,111,-835 in cash. Under this section the Commission has made rules regulating such sales. One of these rules, designated as Rule U–44, prohibits the sale by any registered holding company of any security or any public utility company or any utility assets with exceptions not here relevant except pursuant to a declaration notifying the Commission of the proposed transaction and pursuant to the Commission's order with respect thereto under the applicable provisions of the act. Another of these rules, designated as Rule U–50, with certain exceptions, requires that securities of, or owned by, any registered holding company or subsidiary company be sold at competitive bidding pursuant to the procedure therein specified. Some of the exceptions, as for instance, that the total proceeds of the sale to the issuer or vendor will not exceed $1,000,000, are self-operative. Others require specific findings by the Commission pursuant to application therefor. Federal duly applied for an exception pursuant to Par (a) (5) (C) of the rule on the ground that compliance with competitive bidding requirements was not

"(C) necessary or appropriate in the public interest or for the protection of investors or consumers to assure the maintenance of competitive conditions, the receipt of adequate consideration or the reasonableness of any fees or commissions to be paid with respect to sales of securities subject to § 12(d) of the act."

After public notice of Federal's proposed private sale a public hearing was held on July 30 and 31, 1945. Petitioner was granted the right to intervene and was accorded full opportunity to be heard. It cross-examined the witnesses produced by Federal and the Commission, and produced witnesses of its own in support of its contention that the requested exception from competitive bidding should be denied. No stockholder, however, or other person financially interested in the sale appeared at the hearing to oppose the fairness of the sale price or the application for exception from competitive bidding.

Upon completion of the public hearing the Commission on August 21, 1945, heard oral argument at petitioner's request. On September 14, 1945, the Commission issued its findings [4] and opinion and the order, by which petitioner claims to be aggrieved, and granting the requested exception from the competitive bidding requirements.

[1, 2] The statute authorizing review does not confer on this court any general supervision of the Commission or in any manner charge it with administering the act. On the contrary, it provides that the findings of the Commission as to the facts if supported by substantial evidence shall be conclusive. The city, in its petition for review, does not point to, nor does it show, any respects in which the evidence fails to sustain the Commission's finding that a case for the exception was made out. It takes merely the general position that as a

[4] Among them was this specific finding: "In the light of all these circumstances, we find that compliance with the competitive bidding requirements of paragraphs (b) and (c) of Rule U-50 is not necessary or appropriate in the public interest or for the protection of investors or consumers to assure the maintenance of competitive conditions, the receipt of adequate consideration, or the reasonableness of fees or commissions."

municipality, which with its citizens are consumers, it has some kind of absolute right to insist that the Commission refuse to recognize the exceptions to public bidding which its own rules have laid down. The Commission and Federal, on their part, insist that under the statute the question of the divestment by public holding companies of their interests in public utilities is committed by § 12(d) of the act to the judgment and discretion of the Commission under such rules, regulations, and orders as it may make. Pointing to the provision of the statute that the holding company may not sell in contravention of the rules of the Commission, its regulations and orders regarding the consideration to be received for such sale, the maintenance of competitive conditions and such similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers, or to prevent the contravention of this title or the rules, regulations or orders thereunder, both Federal and the Commission insist that the effort of petitioner here is to have this court put itself in the position of, and exercise the jurisdiction the statute accords to, the Commission.

We agree. A careful consideration of the opinion of the Commission, in the light of the record made, leaves in no doubt that petitioner does not show itself aggrieved in any manner by the proceedings, the findings, or the order of the Commission. With the utmost consideration for petitioner's claims, Commission allowed it to intervene, extended it full opportunity to present evidence and to argue its position. In its findings,[5] it painstakingly and carefully canvassed petition-

[5] "North Miami Beach is the location of the gas manufacturing plant and most of the gas storage facilities of Peoples. However, this community has a population of only approximately 2,000 persons, and less than 800 of the approximately 18,000 customers served by Peoples in Florida are located there. North Miami Beach urges, in brief, that it has not been given an adequate opportunity to compete for the acquisition of the properties of Peoples located in the state of Florida. It states that Federal has been unwilling to allow the city to make engineering examinations and other necessary inspections prior to a determination by it of an appropriate price for such properties. The city represents that it has just recently learned of the fact that Federal must dispose of its interests in the Florida properties.

"The record indicates that C. T. Chenery, president of Federal, and his associates, negotiated over a period of several months with some seven separate groups of persons for the sale of Federal's interests in Peoples. Representatives of the city of Miami Beach, Florida, constituted one of these seven groups. A contract was in fact executed between Federal and Miami Beach, but was not consummated because of the failure of Miami Beach at popular referendum to obtain the necessary authority. It is represented that the price proposed to be paid by Sherritt, the result of some four months of arm's-length negotiation, is the highest price offered Federal by any group. Federal's total expenses, including legal fees, are estimated at $2,500, and no underwriting fees or commissions are involved.

"In considering the competitive bidding requirements of Rule U-50 as they would apply to this case, a number of difficulties present themselves. Representatives of North Miami Beach admit that they cannot bid directly for securities and that any acquisition by that community must be an acquisition of physical properties. While it is suggested by these representatives, without detailed elaboration, that there are, or may be, individuals who are willing to bid on behalf of North Miami Beach for securities and subsequently sell the physical properties to North Miami Beach, there is no indication that this would be done. Moreover, it appears that the common stock of Peoples, even after consummation of the sale of the Mississippi properties and the improvements in its capital structure that will be made in connection therewith, would not be suitable for distribution to the general public. There remains an excessive amount of debt, and no dividends will be payable on the stock until the funded debt of Peoples is reduced to 50 per cent of net property. Moreover, Peoples will still own gas properties in Florida and water properties in Oregon, with no operating relationship whatsoever between them. These fac-

er's contentions that competitive bidding was "required in the public interest or for the protection of investors or consumers to assure the maintenance of competitive conditions," and as carefully pointed out that this was not so, and that on the contrary the public interest and that of investors and consumers alike was better served by granting Federal's application for sale without competitive bidding.

The findings of the Commission are approved. Its order is

Affirmed.

NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT

Staten Island Edison Corporation

v.

Milo R. Maltbie et al.

270 App Div 55, 58 NY Supp2d 818
November 4, 1945

APPEAL *from judgment dismissing complaint in suit to restrain enforcement of Commission orders reducing electric rates; reversed. For decision by lower court, see (1945) — Misc —, 60 PUR(NS) 362, 57 NY Supp2d 515.*

Injunction, § 51 — Motion to dismiss complaint — Presumption as to allegations — Defense contained in answer.

1. Allegations in a complaint for injunction must be taken as established

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tors would have some tendency to limit the number of potential purchasers if competitive bidding were required. Sherritt has testified that he will proceed with the sale of the Oregon properties, now being negotiated by Peoples with a public authority organized to acquire them, and has agreed to purchase the stock subject to the restriction on dividends.

"If the only argument before us were the claim that the seller has already agreed to sell to a particular buyer at a price which the seller considers to be the best obtainable, we should insist upon compliance with the competitive bidding requirements of Rule U-50, since that rule is intended to insure, among other things, that the fullest competitive opportunities are afforded by sellers to prospective buyers. We have, however, given weight to the circumstances mentioned above, including the fact that the price is close to the $1,000,000 level, below which an exception from competitive bidding is automatically granted; the fact that competitive bidding would be complicated by the pending negotiations for sale of the Oregon properties and by the dividend restriction on the stock of Peoples; and the fact that the city of North Miami Beach, which claims that it has had inadequate opportunity to bid, would be unable to bid on the stock, and has been unable to supply any satisfactory assurance that it could finance the acquisition of the Florida properties.

"In the light of all these circumstances, we find that compliance with the competitive bidding requirements of paragraphs (b) and (c) of Rule U-50 is not necessary or appropriate in the public interest or for the protection of investors or consumers to assure the maintenance of competitive conditions, the receipt of adequate consideration, or the reasonableness of fees or commissions."

facts when a motion by defendants for judgment on the pleadings is based on the ground that a review by certiorari is the exclusive remedy of the plaintiff, and defenses contained in the defendants' answer may not be considered, p. 35.

Injunction, § 28 — Against rate reduction order — Allegation of confiscation — Availability of certiorari.

2. A complaint by a public utility company alleging that an order of the Commission reducing temporary and permanent rates is confiscatory states facts entitling the company to maintain an action in equity for injunction, notwithstanding the existence of a doubtful remedy at law by a certiorari proceeding to review the order, in which proceeding the court could not substitute its judgment upon the facts for that of the Commission, p. 35.

Injunction, § 16 — Adequacy of remedy at law.

3. A remedy at law must be sufficient, full, and complete, and efficient to the attainment of the ends of justice, in order to preclude the granting of relief by a court of equity, p. 35.

Injunction, § 13 — Protection of constitutional rights — Administrative remedies.

4. A litigant alleging violation of constitutional rights of property should not be turned out of court with the curt admonition that he must submit his grievance to the mercy of administrative officials, nor should the court confess its inability to comprehend and intelligently decide the issues involved, where confiscation is alleged; it does not limit or impair any useful function of the Commission for the court to pass upon such a charge, p. 35.

Injunction, § 2 — Grounds for denial — Time necessary for trial.

5. The court should not decline to take jurisdiction of an action for injunction to restrain enforcement of a Commission rate order alleged to be confiscatory, and try the issues, because of the length of time necessary for trial, p. 35.

(HILL, P. J., concurs in separate opinion; BREWSTER and FOSTER, JJ., dissent.)

Before Hill, P. J., and Heffernan, Brewster, Foster, and Lawrence, JJ.

APPEARANCES: Naylon, Foster & Shepard, of New York city (Jackson A. Dykman, of Brooklyn, and Edmund B. Naylon, Royal F. Shepard, and George Foster, Jr., all of New York city, of counsel), for appellant; Philip Halpern, of Albany (George H. Kenny and Samuel R. Madison, both of Albany, on the brief), for defendants; Ignatius M. Wilkinson, Corporation Counsel, of New York city (Francis J. Bloustein and Harry Hertzoff, both of New York city, of counsel), for city of New York, amicus curiae.

HEFFERNAN, J.: Plaintiff, a corporation engaged in the production, purchase, distribution, and sale of electricity throughout Staten Island in the borough and county of Richmond, is appealing from orders of the Albany special term of the supreme court (Elsworth, J.) which (1) granted defendants' motion for judgment on the pleadings dismissing the complaint under rule 112 of the Rules of Civil Practice; (2) denied plaintiff's motion for a temporary injunc-

tion; and (3) denied plaintiff's motion to strike out the separate defenses contained in the answer and from the judgment entered thereon.

On November 10, 1936, defendants instituted an investigation of the accounts and records of plaintiff. A year later the proceeding was broadened to include an investigation of plaintiff's rates and charges. While the investigation was in progress defendants, on May 27, 1943, ordered the establishment of temporary rates pursuant to § 114 of the Public Service Law.

Plaintiff instituted an action in equity to restrain enforcement of the order prescribing temporary rates. On motion of defendants the special term dismissed the complaint for failure to state a cause of action and for want of jurisdiction. This court (267 App Div 72, 52 PUR(NS) 166, 45 NY Supp2d 337) and the court of appeals ([1944] 292 NY 611, 55 NE 2d 376) upheld the judgment of dismissal.

Our court did not base its decision on the ground "that certiorari was the exclusive remedy and that a suit in equity would not lie" as asserted in the brief of defendants' counsel. Our judgment was placed solely on the ground that no question of confiscation can arise in a case involving only temporary rates because of the recoupment provisions of the temporary rate statute.

The temporary rates have been in effect since August 1, 1943.

On June 19, 1945, defendants made an order prescribing final rates to be charged by plaintiff for electric services furnished to its consumers on and after July 1, 1945. The effective date of the order was later extended to September 10, 1945.

Plaintiff then instituted the present plenary action in equity in which it seeks a judgment permanently enjoining the enforcement of the temporary and final rate orders on the ground that its property is being taken without just compensation through the imposition of rates which are confiscatory.

[1] The special term granted defendants' motion for judgment on the pleadings on the ground that a review by certiorari under Art 78 of the Civil Practice Act is the exclusive remedy of plaintiff. On such a motion the allegations in the complaint must be taken as established facts. The defenses contained in defendants' answer may not be considered. Lipkind v. Ward (1939) 256 App Div 74, 8 NY Supp2d 832.

[2–5] The principal question before us in this case is the sufficiency of the complaint. Do the facts alleged in that pleading entitle plaintiff to maintain this action or must it have recourse to a certiorari proceeding to redress its alleged grievances?

It is not necessary to discuss the allegations contained in the complaint other than to say that it specifically and unequivocally charges that the temporary and permanent rates prescribed by defendants are confiscatory. As to that issue plaintiff contends that it is entitled to the exercise of the independent judgment of the court as to the law and the facts and that the remedy by certiorari is inadequate.

So far as our research goes the question for decision here has never been directly passed upon by this court or the court of appeals. We referred

to it in People ex rel. Pennsylvania Gas Co. v. Public Service Commission, 211 App Div 253, PUR1925C 608, 207 NY Supp 599, and again in New Rochelle Water Co. v. Maltbie (1936) 248 App Div 66, 15 PUR (NS) 32, 289 NY Supp 388.

In rate regulation the Public Service Commission acts in a legislative capacity. Brooklyn Union Gas Co. v. Maltbie (1935) 245 App Div 74, 9 PUR(NS) 153, 281 NY Supp 233. The Commission is a creature of the legislature and is its alter ego in rate making. International R. Co. v. Public Service Commission, 226 NY 474, PUR1919F 355, 124 NE 123; People ex rel. Joline v. Willcox (1908) 129 App Div 267, 113 NY Supp 861, affirmed (1909) 194 NY 383, 87 NE 517; Prentis v. Atlantic Coast Line Co. (1908) 211 US 210, 53 L ed 150, 29 S Ct 67.

A review in certiorari of defendants' orders will not give plaintiff adequate relief. In such a proceeding we cannot substitute our judgment upon the facts for that of the Commission. We review only questions of law and do not examine the facts further than to determine whether there was substantial evidence to sustain the determination. New Rochelle Water Co. v. Maltbie, *supra*.

We are convinced that a utility may maintain an action in equity in this state for relief against confiscation resulting from an order of defendants. It is not enough to bar equitable relief that a doubtful remedy at law exist. Such remedy must be adequate to afford full redress, both in respect to the final relief sought and the mode of obtaining it. In order to preclude the granting of relief by a court of equity the remedy at law must be sufficient, full and complete, and efficient to the attainment of the ends of justice.

Where constitutional rights of property are involved a litigant should not be turned out of the Supreme Court with the curt admonition that he must submit his grievance to the mercy of administrative officials. Neither should the court confess its inability to comprehend and intelligently decide the issues involved where confiscation is alleged. It does not limit or impair any useful function of the Commission for the court to pass upon such a charge. If, after a trial, the court should adjudge that the rate fixed by defendants is confiscatory it does not fix the rate; it merely suspends enforcement of the confiscatory rate and remands the matter to defendants for the prescription of a new rate.

The novel argument is made that the Supreme Court should decline to take jurisdiction of the cause and try the issues because of the length of time necessary for trial. The time element should not deter the court in the performance of its duty.

It must be kept in mind that the only question for determination on this appeal is the sufficiency of the complaint. From the allegations of that pleading and the inferences to be drawn therefrom we hold that it is sufficient to give appellant its day in court. We express no view as to the procedure to be followed at the trial. That problem is for the trial court.

It would serve no useful purpose to attempt to analyze the numerous cases pressed upon our attention by counsel for the interested parties. No case is cited to sustain the proposition that a rate determination may not be at-

tacked and annulled in a court of equity if the utility can show that constitutional requirements have been ignored. Where confiscation is alleged, as in the case before us, the utility is entitled to an independent investigation of the facts by a court in a plenary suit in equity.

The constitutionality of an act of the legislature is reviewable in a court of equity. "The Public Service Commission is the delegate of the legislature; and regulation by the one is regulation by the other." International R. Co. v. Public Service Commission, *supra* [226 NY 474, PUR1919F at p. 358, 124 NE at p. 124]. If an act of the legislature is reviewable in the courts certainly the act of its delegate is likewise reviewable.

Defendants contend that the case of People ex rel. Consolidated Water Company of Utica v. Maltbie (1937) 275 NY 357, 20 PUR(NS) 375, 9 NE2d 961, is decisive of the question involved here. We do not so interpret that decision and certainly the United States Supreme Court did not when the case reached that tribunal. (1938) 303 US 158, 82 L ed 724, 22 PUR(NS) 136, 58 S Ct 506, 507. In dismissing the suit the court said: "1. Appellant contends that it is entitled to the exercise of the independent judgment of a court as to the law and the facts with respect to the issue of confiscation, and that such a review has not been accorded because of the limitations imposed by the state practice in certiorari proceedings. 275 NY at p. 370. Appellant has no standing to raise this question as appellant itself sought review by certiorari and has not invoked the plenary jurisdiction of a court of equity and *it does not appear that this remedy is not available under the state law.* People ex rel. Pennsylvania Gas Co. v. Public Service Commission, 211 App Div 253, 256, PUR1925C 608, 207 NY Supp 599 [601]; New Rochelle Water Co. v. Maltbie (1936) 248 App Div 66, 70, 15 PUR(NS) 32, 289 NY Supp 388 [392]." (Emphasis supplied.)

In the case last cited the court of appeals was dealing with a certiorari proceeding and not with the right to a plenary action in equity. The relator in that case was reviewing the determination of defendants under Art 78 of the Civil Practice Act and not by a suit in equity. When a litigant has available both the remedy of certiorari and a cause of action in equity and elects to proceed in certiorari he is restricted to the limited review provided therein.

In the case at bar plaintiff has elected to invoke the aid of a court of equity. In our judgment it is entitled to do so.

The orders and judgment appealed from should be reversed on the law and facts, with costs to appellant, the four separate defenses contained in defendants' answer are stricken out and plaintiff's motion for a temporary injunction is granted on condition that plaintiff file an appropriate bond to protect all persons in the event that the relief sought in this action should be ultimately denied. The form and sufficiency of the bond shall be approved by a justice of this court.

Orders and judgment appealed from reversed, on the law and facts, with costs to appellant, the four separate defenses contained in defendants' answer are stricken out and plaintiff's

motion for a temporary injunction is granted on condition that plaintiff file an appropriate bond to protect all persons in the event that the relief sought in this action should be ultimately denied. The form and sufficiency of the bond shall be approved by a justice of this court.

Hill, PJ., and Heffernan and Lawrence, JJ., concur.

Hill, JP., concurs in a separate opinion.

Foster, J., dissents in an opinion in which Brewster, J., concurs.

HILL, PJ. (concurring): The Supreme Court of the United States is the final authority as to confiscation and the taking of private property for public use without due process and compensation. Appellant seeks to raise these issues by a suit in equity, asserting that rates fixed by the Commission are confiscatory, and that its property will be taken without due process, in violation of the Fourteenth Amendment. The Public Service Commission contends that resort may not be had to equity as the state, they say, has provided a remedy and review by law, Art 78, Civil Practice Act.

Counsel seem to agree that as of 1920 (Ohio Valley Water Co. v. Ben Avon, 253 US 287, 64 L ed 908, PUR1920E 814, 815, 40 S Ct 527, 528) this suit might have been maintained. Of this there is no question, as the prevailing opinion says: "The order here involved prescribed a complete schedule of maximum future rates and was legislative in character. (Citations.) In all such cases, if the owner claims confiscation of his property will result, the state must provide a fair opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts; otherwise the order is void because in conflict with the due process clause, Fourteenth Amendment. (Citations.)"

It is asserted by counsel for the Commission that the Ben Avon doctrine, *supra,* has been repudiated by the Supreme Court of the United States, and that such repudiation "was foreshadowed" in the concurring opinion of Justice Brandeis in St. Joseph Stock Yards Co. v. United States (1936) 298 US 38, 80 L ed 1033, 14 PUR(NS) 397, 404, 56 S Ct 720, 726. In that case the prevailing opinion was written by Chief Justice Hughes. He discusses the constitutional limits as to rate making, and the prohibition concerning the taking of private property for a public use without due process and just compensation, and says that when the legislature acts directly, it is subject "to judicial scrutiny and determination in order to prevent the transgression of these limits of power," and that a legislative agent is subject to the same constitutional limitation; "legislative agencies, with varying qualifications, work in a field peculiarly exposed to political demands. Some may be expert and impartial, others subservient. It is not difficult for them to observe the requirements of law in giving a hearing and receiving evidence. But to say that their findings of fact may be made conclusive where constitutional rights of liberty and property are involved, although the evidence clearly establishes that the findings are wrong and constitutional rights have been in-

vaded, is to place those rights at the mercy of administrative officials and seriously to impair the security inherent in our judicial safeguards." Earlier in the opinion, and citing the Ben Avon Case, [*supra,*] among others, he says: "Here a large capital investment is involved and the main issue is as to the alleged confiscation of that investment. A preliminary question is presented by the contention that the district court, in the presence of this issue, failed to exercise its independent judgment upon the facts." This was held to be error. In a concurring opinion Justice Brandeis says: "Like the lower court, I think no good reason exists for making special exception of issues of fact bearing upon a constitutional right," and Justices Stone and Cardozo concurring say: "We think the opinion of Mr. Justice Brandeis states the law as it ought to be, though we appreciate the weight of precedent that has now accumulated against it." Such was the discussion which, according to the Commission's counsel, "foreshadowed" the abandonment of the Ben Avon doctrine. Two years later United Gas Pub. Service Co. v. Texas came before the court. (1938) 303 US 123, 82 L ed 702, 22 PUR(NS) 113, 124, 133, 135, 58 S Ct 483, 491. In regard to that case the Commission's counsel says: "The Ben Avon doctrine was reduced to an absurdity." The opinion there was written by Chief Justice Hughes. He discussed the contention of the appellant that in the trial in the Texas court, state statutes and decisions were not observed and stated that it was not the function of the Supreme Court to decide local questions but only to deal with the claimed violation of Federal rights; "as to the requirement of due process under the Federal Constitution, appellant contends that it was denied the independent judicial judgment upon the facts and law to which it was entitled (citing the Ben Avon Case, inter alia). The proceeding in the state court undoubtedly purported to afford an independent judicial review." This was concurred in by Justice Brandeis and the justices who concurred with him in the St. Joseph Case, *supra.* The dissenters here were Justices McReynolds and Butler. Their opinion states: "Mr. Justice Butler and I are of opinion that the judgment under review should be reversed. We adhere to the doctrine announced in Ohio Valley Water Co. v. Ben Avon, 253 US 287, 289, 64 L ed 908, PUR1920E 814, 40 S Ct 527, 528, and often reaffirmed." The reason for their dissent was the failure of the Texas court to furnish an "adequate opportunity to submit the law and facts relevant to the controversy to a fair judicial tribunal for determination according to its own independent judgment." The prevailing opinion found that an independent review was provided, and also reaffirmed the Ben Avon doctrine.

Counsel for the Commission asserts that the repudiation of the Ben Avon doctrine "was completed" in Texas R. Commission v. Rowan & Nichols Oil Co. (1940) 310 US 573, 84 L ed 1368, 60 S Ct 1021, 1023. In that suit the protection of the Fourteenth Amendment was invoked in connection with an oil proration order made by the Texas Railroad Commission, which affected the respondents' oil wells. A Texas statute permitted the

Railroad Commission to regulate the amount of oil which a well might produce. This was fixed at 2.32 per cent of its "hourly potential." There were, however, marginal wells of small production which, if their productive capacity was limited to the per cent named, would have to be abandoned. The statute dealing with these permitted the Commission to abandon the hourly formula and allow a production up to 20 barrels a day from each well. Under the percentage formula, the more productive wells averaged only about 22 barrels a day. The unfairness of this was the basis of the litigation. The opinion states that the divergent claims of the well owners present "as thorny a problem as has challenged the ingenuity and wisdom of legislatures. . . . In Texas, according to conventional doctrine, the holder of an oil lease 'owns' the oil in place beneath the surface. . . . But equally recognized is the 'rule of capture' which subjects the lessee's interest to his neighbors' power to drain his oil away. . . . Each leaseholder, that is to say, is at the mercy of all those who adjoin him, since oil is a fugacious mineral, the movements of which are not confined by the artificial boundaries of surface tracts." The statute was assailed because the state courts were not permitted to exercise an independent judgment on what was "reasonable" in connection with the proration order. Chief Justice Hughes and Justice McReynolds concurred in the dissenting opinion by Justice Roberts, who favored a reversal because the decision did not apply the principles "found in the opinion of Mr. Justice Brandeis, written for a unanimous court, in Thompson v. Consolidated Gas Utilities Corp. (1937) 300 US 55, 81 L ed 510, 57 S Ct 364 . . . ." The applicability of this precedent to the issues here presented arises because the Texas decisions "do not make clear whether the local courts may exercise an independent judgment of what is 'reasonable.'" Texas R. Commission v. Rowan & Nichols Oil Co. (1940) 311 US 614, 615, 85 L ed 390, 61 S Ct 66. The decision involves the Fourteenth Amendment, but the issues are dissimilar to those in a rate case. Highly technical training is required to determine the infiltration probabilities of the "fugacious" oil, as to which a jury of laymen would be less qualified to judge than as to the value of structures and cost of equipment used in the distribution of oil, gas, or water.

In New York ex rel. Consolidated Water Co. of Utica v. Maltbie (1938) 303 US 158, 82 L ed 724, 22 PUR (NS) 136, 137, 58 S Ct 506, 507, which went through this court ([1935] 245 App Div 866, 282 NY Supp 412) and was passed upon by the court of appeals ([1937] 275 NY 357, 20 PUR(NS) 375, 9 NE2d 961), a petition for certiorari was dismissed by the Supreme Court. The per curiam opinion states in part: "Appellant contends that it is entitled to the exercise of the independent judgment of a court as to the law and the facts with respect to the issue of confiscation, and that such a review has not been accorded because of the limitations imposed by the state practice in certiorari proceedings. . . . Appellant has no standing to raise this question as appellant itself sought review by certiorari and has not invoked

the plenary jurisdiction of a court of equity and it does not appear that this remedy is not available under the state law. (Citations.)" The foregoing bears the construction that as appellant chose the alternative review under Art 78, Civil Practice Act, it might not be heard to complain because there had been no independent review in the state courts of the issues of fact and law. An inverse inference is permissible that a review by a plenary suit in equity would have been proper, had not the alternative course been taken. Until the Supreme Court of the United States more definitely disavows the long line of precedents, the law on the subject should be regarded as settled. Under Art 78, Civil Practice Act, our courts do not exercise independent judgment as to law and facts.

The order and judgment should be reversed.

FOSTER, J. (dissenting): The appellant in this case asserts that rates established by the Public Service Commission amount to confiscation, and seeks to enjoin their enforcement by a suit in equity. Its complaint has been dismissed, and this appeal from the order of dismissal presents the fundamental question of whether it may sue in equity for an injunction, or whether its sole and exclusive remedy is a certiorari proceeding under Art 78 of the Civil Practice Act.

Obviously this is an important question in the field of public utility regulation. It is a simple matter to allege confiscation in any rate matter, and if such an allegation is sufficient to invoke the jurisdiction of equity then the way is open for separate trials of the same issues in every rate case; first before the Commission, and later at an equity term of the Supreme Court. Something rather extraordinary is required to justify a procedure so protracted and cumbersome.

Appellant's case is built on the major premise that a review in certiorari is too limited to give relief. On issues of fact a review of this character has been so limited by judicial decisions that a determination by the Public Service Commission must be confirmed if there is substantial evidence in the record to sustain it. People ex rel. Municipal Gas Co. v. Public Service Commission, 224 NY 156, PUR1918F 781, 120 NE 132; Municipal Gas Co. v. Public Service Commission, 225 NY 89, PUR1919C 364, 121 NE 772; New Rochelle Water Co. v. Maltbie (1936) 248 App Div 66, 15 PUR(NS) 32, 289 NY Supp 388. Such a determination may not be set aside even though it is against the weight of evidence. People ex rel. New York & Q. Gas Co. v. McCall, 219 NY 84, PUR 1917A 553, 113 NE 795, Ann Cas 1916E 1042.

Curiously enough the statute, supposed to provide a comprehensive scheme for review by certiorari, imposes no such limitation. Article 78, § 1296, subds. 6 and 7, Civil Practice Act. Ordinarily when there has been a hearing pursuant to statutory direction, and such is the case here, Public Service Law, § 72, the reviewing court may not only determine whether there was competent proof of all the facts necessary to make the determination, but it may also set aside the determination if it finds that it was against the weight of evidence.

These same provisions, in almost identical language, were a part of the Code of Civil Procedure (§ 2140, subds. 4 and 5).

Equally curious is the fact that the courts of this state have never vouchsafed any full explanation of why the statute has been ignored. The precise point was raised in the McCall Case, *supra*, but, beyond referring to some authorities which held generally that a reviewing court may not substitute its judgment for that of the quasi judicial agency, the point was not fully discussed or explored. I assume that in all probability the complete explanation rests upon our divided system of governmental powers and responsibilities. The Public Service Commission is merely an arm of the legislature, acting in a legislative capacity, and in this capacity it is the alter ego of the legislature. Brooklyn Union Gas Co. v. Maltbie (1935) 245 App Div 74, 9 PUR(NS) 153, 281 NY Supp 233; International R. Co. v. Public Service Commission, 226 NY 474, PUR1919F 355, 124 NE 123. The fact that it also acts in a judicial manner in prescribing rates, and its decisions are therefore reviewable by certiorari, does not alter the fact that fundamentally its function is legislative. The courts have never assumed the power to set aside a legislative enactment on the ground it was against the weight of evidence. They have invariably applied a basic principle of constitutional law that an act of the legislature, within its proper field, will not be invalidated if there are any reasonable grounds to support it. As applied to a legislative finding on a question of fact substantial evidence would furnish such reasonable grounds. This, I think, is the genesis of the substantial evidence rule as applied to administrative agencies exercising legislative functions. Nevertheless, in defining the scope of certiorari the legislature, itself, has apparently waived the application of this constitutional principle, and had the courts assumed all of the powers granted by the legislature under Art 78 of the Civil Practice Act, a review of that character would be as broad as any litigant could desire. Doubtless they have not done so because to do so in many cases, where only debatable issues exist, would constitute an invasion of the legislative sphere.

I have adverted to these fundamental, perhaps elementary, matters, because in my opinion they have a decisive influence on the question before us. Rate making is an exercise of the police power and therefore a legislative function. An integral part of this function is the ascertainment of values. The Public Service Commission has made a decision on these matters relative to appellant's case. This decision is entitled to exactly the same effect as an act of the legislature. Helfrick v. Dahlstrom Metallic Door Co. (1931) 256 NY 199, 176 NE 141. Under firmly accepted principles of constitutional law it may not be invalidated if there are reasonable grounds to support it. Or to put it another way, it may not be declared confiscatory if there is substantial evidence to sustain it. The logic of this view is inevitable because even if there is substantial evidence both ways then the issue is merely debatable, and the final choice must rest with the agency

which exercises the legislative function.

Certiorari permits an independent review as to the only factual question a court may be concerned with when a legislative decision, arrived at in a quasi judicial manner is challenged as being unconstitutional. I venture to say that equity could do no more. Of course if the decision was a direct act of the legislature then it might be reviewed in equity, but since it is the result of a quasi judicial proceeding then certiorari is the proper remedy, but in either instance the fundamental constitutional issue is the same and must be met with the same test. The form of the complaint, or any rule of practice applied in construing a complaint in ordinary cases, cannot be used to evade these basic principles.

The Federal cases which have been cited to sustain the proposition that the state must provide a fair opportunity for submitting the issue of confiscation to a judicial tribunal for determination upon its own independent judgment are not inconsistent with this view. Ohio Valley Water Co. v. Ben Avon, 253 US 287, 64 L ed 908, PUR1920E 814, 40 S Ct 527; Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 US 679, 67 L ed 1176, PUR1923D 11, 43 S Ct 675. In these cases the court did not define the meaning of "independent judgment," and it does not necessarily follow from the use of this expression that a trial de novo on the facts was meant. There is another construction, wholly plausible, to be drawn therefrom: That the court merely intended to hold the judicial power supreme in cases involving the constitutional issue of confiscation. But this issue does not always take the same form, and this distinction makes a considerable difference as to the manner in which the judicial power shall be asserted. In cases of the character before us the issue of confiscation is not an issue of opinion as to values so as to require a separate trial in another forum to see whether a different conclusion might be reached. It runs only to the question of whether the legislature, or the legislative agency, as the case may be, had a reasonable basis to support its decision, and, as heretofore indicated, the substantial evidence rule is a sufficient test to apply to that question. Certainly this court in a review by certiorari has power to determine such an issue upon its own independent judgment. A review of this character does not violate the due process clause of the Federal Constitution, Amendment Fourteen, and in this state is the exclusive remedy for a review of quasi judicial decisions. People ex rel. Consolidated Water Co. of Utica v. Maltbie (1937) 275 NY 357, 20 PUR(NS) 375, 9 NE2d 961. The fact that in other states, and under the Federal practice, a suit in equity might be resorted to for the same purpose is of no consequence here.

The contrary view must necessarily rest upon the theory that a court of equity has some infallible standard of accuracy as to values, a breach of which impairs appellant's constitutional rights. I know of no such standard. Values are not absolute, and are notoriously matters of opinion, or conclusions to be drawn from competent testimony. One tribunal may

differ with another on such an issue, but constitutional impairment does not rest in such a difference. It rests only in the question of whether the agency empowered in the first instance to determine the matter had a fair basis for its decision, and a fair basis of course excludes prejudicial, arbitrary and capricious action. It is suggested in appellant's brief that the Commission may have assumed a fortiori the credibility of its own experts on values and gave credence only to their testimony. If this was intended to charge the Commission with prejudicial conduct that issue may also be determined in certiorari. Newbrand v. Yonkers (1941) 285 NY 164, 33 NE2d 75.

The order should be affirmed.

TEXAS COURT OF CIVIL APPEALS. TEXARKANA

Automatic Gas Company

v.

R. G. Dudding et ux.

No. 6186
189 SW2d 780
August 9, 1945; rehearing denied October 4, 1945

APPEAL *from judgment granting temporary injunction against construction and maintenance of butane gas reservoirs near plaintiffs' residence; judgment reversed and rendered for defendants.*

Orders, § 12 — Gas storage regulation — Status of Commission order and rule.

1. The rules and orders of the Commission regulating the storage and distribution of liquid butane gas have the force of law where they are in conformity to statutes regulating such storage and distribution, p. 47.

Injunction, § 26 — Storage of liquid butane gas — Nuisance factor.

2. The erection of liquid butane gas storage tanks at a location approved by the Commission pursuant to its statutory authority does not constitute such a nuisance per se as to be subject to injunction, notwithstanding the tanks' close proximity to residences, p. 47.

APPEARANCES: Rollins, Clark & McWhirter, of Greenville, for appellant; Mayo W. Neyland and J. Benton Morgan, both of Greenville, for appellees.

HALL, CJ.: This cause was instituted by appellees, Mr. and Mrs. Dudding, against appellant for temporary injunction and upon final hearing for permanent injunction, to

prevent appellant from constructing and maintaining its Butane Gas Reservoirs near their residence located about one mile east of the city of Greenville, Hunt county, Texas, on United States Highway 67.

Appellees alleged that appellant was erecting its Butane tanks adjacent to their home which was located in Ardis Heights, a thickly settled suburb in the city of Greenville and near to an intersection of United States Highway 67 and a state highway, both of which were much traveled thoroughfares.

Appellees alleged further, "that the building and operation of and maintaining this violent explosive in close proximity to the plaintiffs' residence and in such quantity is a constant menace to the safety and welfare of the occupants of plaintiffs' home. That it sets up a reasonable fear in the minds of the occupants that an explosion may occur and if the same does explode it would destroy all property and extinguish all human life within a radius of one thousand yards and that the storage and maintenance of such volume of highly and dangerous explosive adjacent to the residence occupied by these plaintiffs and the residence occupied by each and all of those who are within a quarter of a mile of said tanks containing such a volume of highly explosive liquid constitutes a private and public nuisance. That the plaintiffs, by reason of a reasonable fear of the dire consequences that would happen should the explosion occur, are ever kept in a high and nervous strain, and which tends to, and is a serious injury to, the health of those occupying such residences. That the act of the building and constructing of such tanks as hereinbefore set out and maintaining such quantity of the highly explosive liquid has destroyed the value of plaintiffs' residence to the extent of at least $2,000."

Appellant answered by motion to dismiss because appellees had an adequate remedy at law and to the merits by alleging that the business of storing and dispensing butane gas has been made a lawful business by the legislature and "was not a nuisance per se," and can only become a nuisance by reason of the manner in which the business is conducted; that it had complied with the statutes and the rules of the Railroad Commission made in conformity therewith regulating said business; and that if permitted to install its butane tanks it will comply with all legal requirements.

Upon a hearing the trial court granted a temporary injunction against appellant, restraining it from installing its butane gas tanks; finding:

"From the facts as presented to the court, it is the opinion of the court and the court so finds that the storage of such large quantity of butane gas at the place and under such circumstances is a continuing menace to the life and property of the plaintiffs, and to the residences and homes immediately surrounding said location, and that it is a continuing menace to the public traveling over the highways adjacent thereto, and that the location and amount of explosive, to be stored, under the surrounding conditions and circumstances, creates both a private and public nuisance, and it is the opinion of the court that the temporary injunction applied for by the plaintiffs should be granted, and de-

fendant restrained from completing the installation of said tanks and filling them with butane gas."

Appellant's Point 6 is:

"The Railroad Commission having approved the tanks as being safe and having also approved all equipment and safety devices used in connection therewith as being safe, and the Railroad Commission having likewise approved the location of the storage tanks as being a safe location, the trial court erred in granting a temporary injunction prohibiting the doing of the very thing that the state has by statute and laws authorized appellant to do by the issuance to it of a license and requiring of it a bond for the protection of the public."

Appellees admit that appellant is conducting a lawful business made so by the legislature, and "that appellant has complied with the state statutes as to the physical equipment and construction thereof, and that statutory inspections will be made"; but contends that the tanks are improperly located and "as situated, is a hazard to those living in said section, and especially appellees, and that same is a nuisance per se." This is the controlling question on this appeal.

Appellant is engaged in the wholesale business of storing and distributing butane gas in Hunt and adjoining counties, and proposes to erect two large tanks in which to store its butane gas in liquid state. One of these tanks has already been installed and the foundation has been prepared for the other. Their total capacity is about 18,400 "water gallons." The tanks are to be placed above the ground, on concrete foundations and the proposed location is 128 feet from appellees' residence. The facts show that butane gas is pumped from truck tanks under pressure into the stationary tanks; that when butane is released from pressure it will form a gas, which, being heavier than air, will cling to the low places on the ground and spread; and that when ignited will flash to the source and cause an explosion. The facts are further, that two or three gasoline stations are located in this little community, one of which is much closer to appellees' home than the proposed Butane location. Butane is a recognized commercial product used largely in rural communities for heating and cooking; it is also used as fuel for gins and drilling operations. Appellees are users of butane gas. Their domestic tank of 150 gallons' capacity is located within 15 or 20 feet of their residence but it is buried underground.

As stated above, the only contest here is with respect to the location of appellant's storage tanks. Revised Stat Art 6053, 6053a, Vernon's Tex Civ Stat 1939 Supp Arts 6053, 6053a, regulate the storage and distribution of Butane Gas. Revised Stat Art 6053a, § 2, gives to the Railroad Commission "authority to prescribe such rules and regulations as in its wisdom may be deemed necessary to carry out the purposes of this act"; and § 2a of said act provides:

"After the effective date of this act all containers and pertinent equipment installed for use in this state for the storage and dispensing of liquefied petroleum gases for the purpose of providing gas for industrial, commercial, and domestic uses, shall be designed, constructed, equipped, and installed as

specified under the published regulations of the National Board of Fire Underwriters for the design, installation, and construction of containers and pertinent equipment for the storage and handling of liquefied petroleum gases as recommended by the National Fire Protection Association, effective July, 1937, a copy of said regulations known as National Board of Fire Underwriters Pamphlet No. 58 being on file with the Gas Utilities Division of the Railroad Commission of Texas."

Section B-5 of National Board of Fire Underwriters Pamphlet No. 58 provides that:

"Above ground containers of butane gas having water capacity of over 1,200 gallons shall be constructed a minimum distance of 50 feet from the nearest building or group of buildings; and providing further that above ground containers exceeding 1,200 gallons' capacity may be installed close to buildings or property lines when specifically approved by the inspection department having jurisdiction."

Section b 5 of the Regulations of the Railroad Commission issued September 1, 1943, follows and complies with Pamphlet No. 58, cited above.

On May 19, 1945, after this suit was filed but before hearing was had on the application for temporary injunction, the director of the Gas Utilities Division of the Railroad Commission of Texas approved the proposed location of appellant's tanks. Their location is 127 feet from the nearest residence and 128 feet from appellees' home. The supreme court has held in Housing Authority of Dallas v. Higginbotham (1940) 135 Tex 158, 143 SW2d 79, 87, 130 ALR 1053, 1064, that:

"It is not an invalid delegation of legislative authority to grant to an administrative body the right to make rules to put into effect completed laws," citing authorities.

[1, 2] The rules and orders of the Railroad Commission regulating the storage and distribution of liquid butane gas are in conformity to the statutes, are legal and have the force of law, Bent v. Jonet (1934) 213 Wis 635, 252 NW 290, 126 ALR 1245. One engaging in such business in compliance with said rules is protected in the use of his property and it cannot be declared a nuisance by a court. From this record there can be no serious contention that appellant has failed to comply with the rules of the Railroad Commission with respect to the location of its tanks, nor can there be any contention that the Railroad Commission was not acting under express statutory authority when it approved the proposed location of appellant's tanks. Under such circumstances we must conclude that the trial court was without authority to declare the erection of appellant's tanks on the proposed location a nuisance per se; this for the reason that the Railroad Commission, clothed with full authority by the legislature, has approved the proposed location.

For the reason indicated above, the judgment of the trial court is reversed and judgment here rendered for appellant.

MICHIGAN SUPREME COURT

City of Jackson

v.

Consumers Power Company

No. 41
— Mich —, 20 NW2d 265
October 8, 1945

APPEAL *from decree dismissing complaint seeking injunctive relief, accounting, and refunds as to allegedly illegal gas rates; affirmed.*

Rates, § 116 — Municipal powers — Modification of franchise rates — Notice requirement.

1. A reservation, in an ordinance granting a franchise to a gas company, of the right to alter or amend the ordinance and to make such further regulation as might be deemed necessary to protect the public interest, safety, or welfare of the public, did not vest in the city power to fix ex parte the rates at which gas should be furnished to consumers in that city, p. 50.

Rates, § 226 — Termination of franchise rates — Promulgation of new rates.

2. A gas company has the right to promulgate rates, subject to the control of the Commission, after rates fixed by agreement with a city have expired, p. 52.

Rates, § 110 — Powers of municipality — Rate-fixing power — Notice requirement.

3. A home rule city charter providing that, subject to the limitations of the charter and of the general laws, the city shall have power to regulate gas rates in the city, did not give the city power to fix a rate ex parte, since the power to regulate rates was vested in the state Commission under general law which supplanted any contravening charter provision, p. 53.

Procedure, § 36 — Res adjudicata — Conclusiveness of mere recital.

4. A mere recital by the Commission, not embodied in its findings, holdings, or order, is not res adjudicata, p. 54.

APPEARANCES: Frank L. Blackman, of Jackson, for plaintiff and appellant; Bisbee, McKone, Badgley & McInally, Walter D. Kline, and William R. Roberts, all of Jackson, for defendant and appellee.

NORTH, J.: This is an appeal from a decree in the Jackson county circuit court in chancery dismissing plaintiff's bill of complaint, wherein injunctive relief, accounting, and refunds are sought as to the alleged illegal charge for gas furnished by defendant. Consumers Power Compa-

ny, a Maine corporation, is the successor to rights of several predecessor holders of the franchise in suit, each of which, except as otherwise indicated, is hereinafter designated as the "company." March 28, 1887, Jackson common council adopted a franchise ordinance granting to the original company the right to use city streets for gas mains, to furnish gas, and in that field to operate in Jackson in a public service capacity. This franchise, known as Ordinance No. 64, was without limit as to time or date of expiration, and is therefore conceded by the litigants to be perpetual.

The provisions of the franchise particularly pertinent to decision in the instant case are §§ V and VI:

"Section V: Gas manufactured . . . shall be furnished . . . at the price of not to exceed $2 per thousand cubic feet, and shall be furnished to said city of Jackson for public lighting and for all purposes for which it may desire to use the same at not to exceed $1.50 per thousand cubic feet.

"Section VI: There is hereby reserved to the common council of the city of Jackson the right to alter or amend this ordinance and to make such further rules, orders, and regulations as may from time to time be deemed necessary to protect the interest, safety, or welfare of the public, or the rights of property of said city of Jackson."

Section V was amended July 2, 1906, changing the rates to be charged, and amended again as to rates August 5, 1918, and November 19, 1918. All of these amendments were accepted by the company. During the years 1918 to 1920 the rate was modified on three occasions as a result of an express agreement between the parties. October 19, 1943, Ordinance No. 189, was passed by the city, amending Ordinance No. 64. It reduced the gas rate about 20 per cent. This ordinance was not accepted by the company. Instead it continued its then current rate, with the result that the city brought the instant suit to enforce the 1943 Ordinance No. 189; and this appeal followed dismissal of the suit, such dismissal being primarily on the ground that Ordinance No. 189 was void.

Prior to 1943 manufactured gas had been supplied in the city of Jackson from a local gas works. During 1941 and 1942 a natural gas distribution system was worked out by the company and interconnected with the company's distribution system which served Jackson and various other cities, thus constituting a single utility system. While the company was making these arrangements, it applied in May, 1941, to the Michigan Public Service Commission for authority to connect the various systems and to change over from manufactured to natural gas. It also petitioned the Commission to fix rates to be charged. By its order dated June 23, 1941, the Commission gave approval to the plan and also approved a uniform rate schedule for the utility area, but refrained from making its rate applicable in the city of Jackson. The reason for the nonaction of the Commission was stated by it as follows: "The Commission's records show that the rates in all of the communities affected by this change from manufactured to natural gas are under the jurisdiction of the Commission with the ex-

ception of the cities of Jackson (and other municipalities not here involved), in which cases the rates are regulated by franchise." The company, believing it had the right, in January, 1943, promulgated identical rates for the city of Jackson as had been approved by the Michigan Public Service Commission for the other cities receiving the same gas service and constituting a part of the same distribution system.

The city claims that, because of the power reserved to it in § VI of the franchise ordinance above quoted, it has the right, without consent on the part of defendant, to fix the rate which the latter may charge for furnishing gas to the Jackson consumers. Defendant denied that the city had or has the asserted power; and contends that under the terms of the franchise ordinance the rate could be fixed (and at all times prior to 1937 was fixed) by agreement of the parties; and that since subsequent to 1937 the rate was not so fixed in Jackson, defendant itself had the power to fix the rate to be charged for its service, subject to the control of the Michigan Public Service Commission.

[1] The primary question is whether Ordinance No. 64, by which the Jackson city council in 1887, granted the franchise, by reservation therein gave the city council the power to fix from time to time the rate which the company could charge for its service. It is not claimed nor could it be, that such a reservation of power is set forth in express words in the franchise ordinance. Instead, after providing in § V a maximum rate, the reservation in § VI is: "the right to alter or amend this ordinance and to make such further rules, orders, and regulations as may from time to time be deemed necessary to protect the interest, safety, or welfare of the public, or the rights of property of said city of Jackson."

In Detroit v. Detroit Citizens' Street R. Co. (1902) 184 US 368, 46 L ed 592, 22 S Ct 410, 414, reservations of like import in franchise ordinances were held not to vest in the city power to fix a reduced fare without the consent of the street railway company. The similarity of the reserved powers considered in the Detroit Case to those in the instant case appears from one of the charter provisions there involved. It reads:

"It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders, or regulations as may from time to time be deemed necessary to protect the interest, welfare, or accommodation of the public in relation to said railways."

Elsewhere in the Detroit franchise ordinance it was provided: "that the rate of fare for a single trip shall not exceed 5 cents . . ." While there are some varying circumstances in consequence of which appellant herein seeks to distinguish the Detroit Case from the instant case, still we think it is an authority in the light of which the reservation in the Jackson franchise ordinance should be construed. In the Detroit Case it appears that the city council sought by an amendment to the ordinance which granted the franchise to fix the fare at less than 5 cents. In the opinion rendered by the United States Supreme Court, as appears from the syllabi which we quote, it held:

"That the rate of fare having been

fixed by positive agreement, under express legislative authority, the subject was not open to alteration thereafter by the common council alone, under the right to prescribe from time to time the rules and regulations for the running and operation of the road.

"That the language of the ordinance which provides that the rate of fare for one passenger shall not be more than 5 cents does not give any right to the city to reduce it below the rate of 5 cents established by the company. . . .

"That the fixing of rates, being among the vital portions of the agreement (franchise) between the parties, it cannot be supposed that there was any intention to permit the common council, in its discretion, to make an alteration which might be fatal to the pecuniary success of the company."

In passing upon the construction to be given to the above-quoted reservation of power in the Detroit franchise ordinance, the court said, at p. 384 of 184 US:

"It would rather seem that the language above used did not and was not intended to give the right to the common council to change at its pleasure from time to time those important and fundamental rights affecting the very existence and financial success of the company in the operation of its road, but that by the use of such language there was simply reserved to the city council the right from time to time to add to or alter those general regulations or rules for the proper, safe, and efficient running of the cars, the character of service, the speed and number of cars, and their hours of operation and matters of a like nature, . . . Such would seem to be a reasonable construction of the language."

In Owensboro v. Cumberland Teleph. & Teleg. Co. (1913) 230 US 58, 57 L ed 1389, 33 S Ct 988, 990, the court had before it the construction of a provision in a franchise ordinance which read: "Section 6. This ordinance may be altered or amended as the necessities of the city may demand." Some years after defendant had been operating under the franchise the city attempted to condition future operations of the company in the city streets upon the payment periodically of certain amounts to the city. In holding that, notwithstanding the above-quoted reservation of power, the attempted action of the city was illegal, the court said:

"The 6th section of the granting ordinance provides that 'this ordinance may be altered or amended as the necessities of the city may demand.' This is no more than a reservation of the police control of the streets, and of the mode and manner of placing and maintaining the poles and wires, incident to the unabridgeable police power of the city. (Citing cases.) It does not reserve any right to revoke or repeal the ordinance, or to affect the rights therein granted."

In accord with the foregoing authorities, and others of like purport which we deem it unnecessary to discuss, we hold that the reservation quoted from the 1887 franchise ordinance did not vest in the Jackson city council power to fix ex parte the rate at which gas should be furnished to consumers in that city. And it may be noted that our holding in this respect is in accord with the construction which was from time to time

placed upon the franchise by the city and the company. Between 1887 and 1936 numerous changes in the rate were made, but in each instance such change became effective only upon the approval and acceptance by the company.

Plaintiff and defendant disagree as to which of them had the right to initiate a rate after the rate, which had been fixed by mutual agreement, expired August 14, 1937. On the one hand, plaintiff asserts it had the right to fix the rate, and, on the other hand, defendant asserts that it had the right to fix the rate, provided such rate was just and reasonable. In this connection it should be noted that the parties to this appeal have stipulated:

"1. There was no rate fixed by franchise ordinance or agreement effective after August 14, 1937.

"2. The rate fixed by § 5 of the original franchise ordinance did not become reinstated after January 1, 1936."

[2] Thus the question for determination in this particular is: Did defendant have the right to initiate a rate for gas service as it did after the last of the former rates agreed upon by the parties expired? Defendant company in January, 1943, promulgated rates. These rates were the same as the rates authorized by the Michigan Public Service Commission in June, 1941, for other areas named in its order and receiving like service. If the rates promulgated by defendant in January, 1943, were unjust or unreasonable, the city's remedy at the time it sought to fix the rate by ordinance in October, 1943, was recourse to the Michigan Public Service Commission. Act No. 3, Pub. Acts of 1939, vested in the Michigan Public Service Commission powers and jurisdiction of the type here involved which theretofore were vested in the Michigan Utilities Commission. Section 6 of the 1939 act provides:

"The Michigan Public Service Commission is hereby vested with complete power and jurisdiction to regulate all public utilities in the state except any municipally owned utility and except as otherwise restricted by law. It is hereby vested with power and jurisdiction to regulate all rates, fares, fees, charges, services, rules, conditions of service, and all other matters pertaining to the formation, operation, or direction of such public utilities.

"Section 8. All acts or parts of acts in any way contravening the provisions of this act shall be deemed to be superseded and repealed hereby."

Under our former holdings it seems clear that the defendant company had the right to promulgate rates, subject however to the control of the Michigan Public Service Commission. See Walker Bros. Catering Co. v. Detroit City Gas Co. 230 Mich 564, PUR 1925D 366, 203 NW 492; Detroit v. Public Utilities Commission (1939) 288 Mich 267, 29 PUR(NS) 203, 286 NW 368; and Dearborn v. Michigan Consol. Gas Co. (1941) 297 Mich 388, 39 PUR(NS) 31, 297 NW 534, 537.

In the first of the above-cited cases the gas company's franchise had expired; but in the instant case the period during which these litigants had fixed the rate by agreement had expired. Hence the following quotation from the syllabus in the first cited case seems applicable to the instant case:

"The rate fixed in a gas company's franchise is not binding after the franchise has expired, and where it continues the service it has the right to fix a reasonable charge therefor, which will not fail because not acted upon by the Public Utilities Commission under Act No. 419, Pub. Acts 1919."

A syllabus in the cited Detroit-Public Utilities Commission Case reads:

"The reserved constitutional power in a city to the control of its streets (Const. 1908, Art 8, § 28) empowers it to contract, not to legislate, for public utility rates; the power to legislate with reference thereto having been lodged by the legislature in the Public Utilities Commission."

And in the cited Dearborn Case, 39 PUR(NS) at p. 35, we said:

"With reference to the promulgation of rates by the company after the expiration of rates, in the schedule included in the franchise, it must be held that such action of the company was not unlawful."

We conclude that, under the circumstances disclosed by this record, defendant had the right to promulgate the gas rate in Jackson as it did in January, 1943. As hereinbefore indicated, the city of Jackson under the franchise ordinance did not have the power to fix ex parte the gas rate; and it follows that its attempt to do so in Ordinance No. 189, which it passed in October, 1943, was ineffective; and since the relief sought in the instant case is predicated upon the enforcement of the 1943 ordinance, plaintiff obviously was not entitled to such relief. Instead, as above stated, its remedy was by proper proceedings before the Michigan Public Service Commission. It is so provided in Act No. 3, Pub. Acts 1939, hereinbefore quoted.

[3] In support of its contention that the Jackson city council had the power to fix ex parte gas rate in Jackson, plaintiff to some extent relies upon the fact that in 1914 Jackson adopted a Home Rule city charter, and that charter contained the following provision:

"Section 5. Subject to the limitations of the charter and of the general laws, the city Commission shall have power: . . . To regulate the prices to be charged for gas, heat, or electricity, by all persons owning or operating in the streets and public places of the city, wires, pipes, and conduits, . . ."

Plaintiff's contention is not tenable. By the express terms of the charter the quoted provision is "Subject to the limitations . . . of the general laws" of the state. As hereinbefore noted, in 1939 the legislature passed a general law Act No. 3, Pub. Acts 1939, by which it is provided:

"Section 6. The Michigan Public Service Commission is hereby vested with complete power and jurisdiction to regulate all public utilities in the state except any municipally owned utility and except as otherwise restricted by law. It is hereby vested with power and jurisdiction to regulate all rates, fares, fees, charges," etc.

This provision in the general laws of the state, to which Jackson's Home Rule charter was subject, supplanted any contravening charter provision. City Commission of Jackson v. Vedder (1920) 209 Mich 291, 176 NW 557; Harsha v. Detroit (1933) 261 Mich 586, 246 NW 849, 90 ALR 853; and Simonton v. Pontiac (1934)

268 Mich 11, 255 NW 608, 611. In the latter case it is said:

"In Harsha v. Detroit (1933) 261 Mich 586, 246 NW 849, 90 ALR 853, we held that the legislature might modify the charters of municipal corporations at will and that the state still retained authority to amend charters and enlarge and diminish their powers."

We quote the following from the syllabi in the Harsha Case, *supra*.

"Rule that corporate charters in which no power of amendment or repeal is retained, when accepted, constitute contracts between state and corporation, applies to private corporations only.

"Municipal corporations are state agencies, and, subject to constitutional restrictions, legislature may modify corporate charters of municipal corporations at will.

"Powers are granted to municipal corporations as state agencies to carry on local government, and state has authority to amend their charters and enlarge or diminish their powers."

Since, as we hold, there was not reserved to the Jackson common council in the 1887 franchise contract either expressly or by necessary implication the right to fix ex parte gas rates in Jackson, the power to finally regulate such rates is now by Act No. 3 of the Pub. Acts of 1939 vested in the Michigan Public Service Commission. This is true notwithstanding the quoted provision in the Jackson Home Rule charter.

[4] As herein before noted, the Public Service Commission recited in its opinion that its "records" disclose that the gas rates in Jackson "are regulated by franchise." We are not in accord with plaintiff's contention that the foregoing is res adjudicata and estops defendant from making a contrary contention in the instant case. The foregoing statement by the Commission appears only in the preliminary part of its opinion. It is not embodied in the findings or holdings of the Commission nor in the order made by the Commission. The trial judge in holding against plaintiff's contention stated: "No issue was framed on the subject, and it is not even apparent from what source this finding came, or upon what it is based." Since the portion of the Commission's opinion upon which plaintiff relies in this particular does not constitute a part of its determination, its findings or its ultimate holding or order, it cannot be held to be res adjudicata and binding as such upon defendant, notwithstanding no appeal was taken.

"We recognize the rule that it is the judgment entered upon such appeal which concludes the parties, and that the parties are not bound by opinions or statements of the court seeking to define the extent to which such judgment shall prejudice the rights of the parties in other actions. (23 Cyc. 1218.)" Nott v. Gundick (1921) 216 Mich 217, 222, 184 NW 864, 865.

Other reasons or grounds in support of the conclusion that the mere recital by the Public Service Commission was not res adjudicata, will be found in Stratton v. Railroad Commission, 186 Cal 119, PUR1921E 537, 198 Pac 1051.

The decree entered in the circuit court dismissing plaintiff's bill of complaint is affirmed, with costs to defendant.

Starr, C. J., and Butzel, Bushnell, Sharpe, Boyles, and Reid, JJ., concur.

The late Justice Wiest, took no part in this decision.

SECURITIES AND EXCHANGE COMMISSION

Re Northern States Power Company et al.

File Nos. 54-54, 70-559, 59-50, Release No. 6127
October 12, 1945

HEARING *on amended holding company liquidation plan under § 11(e) of Holding Company Act; amendment of plan prescribed and order withheld pending action on such amendment.*

Corporations, § 15 — Holding company liquidation — Amendment of plan — Accounting adjustment.

1. A holding company liquidation plan providing for the creation of a reserve for possible accounting adjustments should not be approved in its present form without providing an additional amount sufficient for additional adjustments to utility plant accounts and for probable maximum adjustments to other balance sheet accounts, thus eliminating the need for future amortization of such additional adjustments through income, or by direct charges to earned surplus, in view of an agreement between the Federal Power Commission and the company under which the amounts of plant adjustments and plant acquisition adjustments requiring disposition will be greater than the reserve proposed in the original plan, p. 56.

Accounting, § 56.2 — Capital changes — Reduction in stated value of stock — Holding company liquidation.

2. A holding company liquidation plan providing for the creation of a reserve for accounting adjustments which is insufficient in view of an agreement between the Federal Power Commission and the company should be amended so as to reduce the stated value of the proposed new common stock, thus creating additional capital surplus to be available for the disposition of all known and probable adjustments, p. 56.

By the COMMISSION: Northern States Power Company (Delaware), a registered holding company, and its subsidiary, Northern States Power Company (Minnesota), also a registered holding company, have filed a plan, applications, and declarations, and amendments thereto for the liquidation of Northern States Power Company (Delaware) pursuant to § 11(e) and with respect to other transactions to be performed in connection with such plan, under other applicable sections of the Public Utility Holding Company Act of 1935. We instituted proceedings under §§ 11(b), 15(f) and 20(a) of the act, 15 USCA §§ 79k(b), 79o(f), 79t(a), with re-

spect to the entire holding company system and the two actions were consolidated. Thereafter, extensive hearings were held.

On April 26, 1945, we issued our findings and opinion[1] in which we stated that if within ten days from the date of said opinion the plan were amended in accordance with the views expressed therein (we required that "paid-in" surplus of $4,989,707 at December 31, 1943, be transferred to the Reserve for Depreciation), an appropriate order approving said plan, as so amended, would be entered subject to the reservations of jurisdiction mentioned therein. The time within which such amendment was to be filed was extended pending the issuance of a final ruling by the Bureau of Internal Revenue regarding the taxability of certain of the proposed transactions set forth in the plan. The required amendment was filed on July 10, 1945, and it would thus be appropriate to proceed with the issuance of an order approving the amended plan except for certain circumstances subsequently arising, as described below.

[1, 2] In our previous opinion, we approved the creation of a "Reserve for Possible Adjustment of Utility Plant Accounts and Other Balance Sheet Accounts" in the amount of $29,500,000. In this connection, we stated that the amounts now classified in Utility Plant Acquisition Adjustments and Utility Plant Adjustments represent solely the company's determination. We pointed out that: "It may well be that upon the completion of the Federal Power Commission's audit the amounts in each of these accounts will be increased or a substantial portion of the items now classified as Utility Plant Acquisition Adjustments will be determined to be Utility Plant Adjustments. The reserve, which is created on the basis of the best data presently available, may prove to be either excessive or inadequate to effect compliance with such orders as may be issued by the Federal Power Commission with respect to the original cost of the company's properties as well as with such orders as we may enter in the §§ 15(f) and 20(a) proceedings over which we will retain continuing jurisdiction."

Since the publication of our findings and opinion, the Federal Power Commission has advised us that an understanding has been reached informally between its staff and representatives of the company, under which the amounts of plant adjustments and plant acquisition adjustments requiring disposition will be approximately $2,400,000 greater than the reserve proposed in the plan, entirely apart from other balance sheet adjustments which we may require pursuant to our reserved jurisdiction.

In the light of this further information, we do not think it would be appropriate to enter an order approving the plan in its present form without providing an additional amount sufficient for the known additional adjustments to utility plant accounts and for probable maximum adjustments to other balance sheet accounts, thus eliminating the necessity for future amortization of such additional adjustments through income, or by direct charges to earned surplus. Instead, it is our tentative view that the plan should be further amended so as

[1] Re Northern States Power Co. Holding Company Act Release No. 5745.

to reduce the stated value of the proposed new common stock from $6.75 to $6 per share, thus creating additional capital surplus of $6,162,171, which will be available for the disposition of all known and probable adjustments.[2] Such amendment would, of course, merely affect the stated value of the new common stock on the balance sheet, and would not affect or relate in any way to earnings per share, income available for dividends, or values for the purpose of determining allocations under the plan.[3]

Under these circumstances, we shall withhold the issuance of any order for a further period of fifteen days from the date of this opinion, to afford any interested person opportunity to request a hearing on the limited question of whether the plan should be amended in the single respect indicated above. Any request for such hearing should specifically indicate the nature of the evidence to be produced. Unless a hearing shall have been ordered pursuant to any such request, we shall at the end of such fifteen days' period either enter an order approving the plan if Northern States shall have filed the necessary amendment in the meantime, or afford such additional time for filing the amendment as may be shown to be necessary. Any order approving the plan will be subject to the reservations of jurisdiction mentioned in our findings and opinion of April 26, 1945, and will also reserve jurisdiction over all charges to the capital surplus created as above indicated.

The secretary of the Commission shall serve copies of this memorandum opinion by registered mail to all parties to these proceedings and to persons granted leave to be heard therein.

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[2] Nothing stated herein shall be construed as a determination of the nature and amounts of the balance sheet accounts and necessary future adjustments.

[3] On the contrary, the purpose would be to avoid any adverse effect on the earnings or any change in allocation which might result from the necessity of otherwise disposing of the additional inflationary items.

UNITED STATES CIRCUIT COURT OF APPEALS, THIRD CIRCUIT

Carl McIntire et al.

v.

William Penn Broadcasting Company of Philadelphia

No. 8928
151 F2d 597
October 12, 1945

APPEAL *from decree dismissing amended complaint against broadcasting station for canceling broadcasting contracts on ground that complaint stated no cause of action; affirmed.*

Monopoly and competition, § 102 — Sufficiency of complaint — Action under Federal antitrust laws.

1. An amended complaint against a radio station for canceling plaintiff's contract for religious broadcasts states no cause of action under the Federal antitrust laws where neither conspiracy nor concert of action is asserted, where it is not alleged that the radio station is in a dominant position in the broadcasting field, or that it is a member of a chain which so monopolizes radio broadcasting as to render it impossible for the plaintiff to find other outlets for its broadcast, and where it is not alleged that the station seeks to eliminate a competitor by refusing to sell radio time to the plaintiff, p. 62.

Radio, § 8 — Selection of program material — Discrimination.

2. The selection of program material to be broadcast has been delegated by statute to the taste and discrimination of the broadcasting stations, p. 62.

Pleading, § 8 — Sufficiency of complaint — Action under Federal statute.

3. A complaint against a radio station for invoking the cancellation clause of a broadcasting contract and canceling plaintiffs' paid contracts for religious broadcasts states no cause of action under the Federal Communications Act where the complaint cites no specific provision of the act which has been violated by the defendant, p. 63.

Constitutional law, § 1 — Freedom of speech — Cancellation of broadcasting contract.

4. A broadcasting company, in canceling a contract for the broadcast of religious programs in accordance with a cancellation clause contained in such contract, does not abridge the rights of freedom of speech and the free exercise of religion, p. 63.

Constitutional law, § 1 — Purpose of First Amendment — Broadcasting rights.

5. A broadcasting station, by canceling a contract for religious broadcasts

pursuant to a cancellation clause in such contract was not subject to liability for violation of the First Amendment of the Federal Constitution, since a broadcasting station is not an instrumentality of the Federal government and that amendment was intended to operate as a limitation to the actions of Congress and of the Federal government, p. 63.

Constitutional law, § 1 — Impairment of freedom of speech — Private right of action.

6. No Federal statute gives a cause of action against a private person who has abridged another's right to freedom of speech or to the free exercise of religion, p. 63.

Radio, § 8 — Censorship of program.

7. A radio broadcasting station is not prohibited by law from refusing to sell time in which an individual may broadcast his views, although such refusal may constitute censorship, p. 63.

Public utilities, § 105.1 — Status of radio broadcasting station.

8. A radio broadcasting station is not a public utility in the sense that it must permit broadcasting by whoever comes to its microphones, p. 63.

Courts, § 23 — Federal courts following state laws.

9. Questions of law in an action in a Federal court against a Pennsylvania radio station for canceling a broadcasting contract executed in Pennsylvania must be determined by the law of Pennsylvania where the Federal court jurisdiction rests on diversity of citizenship, p. 64.

Evidence, § 11 — Presumption — Place of execution of contract.

10. In an action against a Pennsylvania radio station for canceling a broadcasting contract, it must be presumed, in the absence of allegations to the contrary, that the contract was executed and delivered in Pennsylvania, for the purpose of determining the applicability of Pennsylvania law, p. 64.

Radio, § 8 — Cancellation of broadcasting contract — Validity of unilateral cancellation clause.

11. A unilateral cancellation clause reserved to a radio station in a broadcasting contract is valid, p. 64.

Radio, § 1 — Public interest.

Statement that a radio broadcasting station must operate in the public interest and must be deemed to be a trustee for the public, p. 61.

APPEARANCES: William S. Bennet, of New York city (Roy Martin Boyd, of Philadelphia, Pa., Weidner Titzck of Camden, N. J., and Bennet, House & Couts, of New York city, on the brief), for appellants; Thomas B. K. Ringe, of Philadelphia, Pa. (James B. C. Howe and W. Theodore Pierson, both of Washington, D. C., A. Allen Woodruff, of Philadelphia, Pa., Pierson & Ball, of Washington, D. C., and Morgan, Lewis & Bockius, of Philadelphia, Pa., on the brief), for appellee.

Before Biggs, Waller, and McLaughlin, Circuit Judges.

BIGGS, C. J.: The plaintiffs are clergymen or religious corporations who have been broadcasting religious

programs over Radio Station "WPEN" owned and operated by the defendant. The station operates under a short-term license in the usual form[1] issued by the Federal Communications Commission under the Communications Act of 1934. See 47 USCA § 307. WPEN devoted at least a fifth of its available broadcasting time to religious programs. All of the time consumed by these plaintiffs' programs was paid for by the plaintiffs as sponsors pursuant to contracts entered into by them and the defendant. The dates at which the contracts of the plaintiffs would have expired, except for the happening of the events hereinafter referred to, are listed below.[2]

Each contract contained a provision which authorized termination by the defendant by giving two weeks' notice in writing. On February 20, 1945, the defendant served on each of the plaintiffs a written notice of intention to terminate the contracts in accordance with this provision. Though the expiration dates specified in the notices in every instance fell prior to Easter Sunday, 1945 (April 1st), the defendant offered to permit each plaintiff to continue broadcasting over WPEN up to and including April 1, 1945. All of the plaintiffs continued their broadcasts through that day. Thereafter the defendant refused to permit any of the plaintiffs to broadcast their programs.

As will be observed from the dates set out in note 2 *supra*, the contract of Young Peoples Church of the Air expired by its own terms on April 1, 1945. All other contracts, save one, would have reached their original expiration dates by September 23, 1945. The remaining contract would have expired on November 11, 1945. The defendant stated its reason for cancelling the contracts as follows: "Instead of time for religious broadcasts being sold on a commercial basis as has heretofore been done, we plan to inaugurate on a substantial basis, as a public service a series of religious broadcasts of general interest, the time for which will not be sold."[3]

The original complaint filed by the plaintiffs asserted that jurisdiction lay

[1] The license of Station WPEN provides in part:

"The licensee shall, during the term of this license, render such broadcasting service as will serve public interest, convenience, or necessity to the full extent of the privileges herein conferred.

"This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein."

[2]

Specified Expiration Date	Name of Plaintiff	Date of Contract
April 1, 1945	Young Peoples Church of the Air, Inc.	May 3, 1944
May 26, 1945	E. Schuyler English (The Pilgrims)	May 2, 1944
May 27, 1945	Carl McIntire	May 18, 1944
June 17, 1945	Wesleyan Methodist Church	May 8, 1944
June 23, 1945	Word of Life Fellowship, Inc.	May 8, 1944
June 30, 1945	Wiley Mission, Inc.	June 12, 1944
July 22, 1945	Wiley Mission, Inc.	June 12, 1944
Sept. 23, 1945	Highway Mission Tabernacle	Aug. 28, 1944
Nov. 11, 1945	Theodore Elsner (Phila. Gospel Tabernacle)	Oct. 28, 1944

[3] Quoted from the notices of cancellation dated February 20, 1945.

in the district court under § 406 of the Communications Act of 1934, 47 USCA § 406. Upon it becoming apparent that the defendant was not a "common carrier" as defined in § 4 (h),[4] 47 USCA § 153(h), the plaintiffs amended the bill of complaint and bottomed their cause on four sets of allegations. These may be stated as follows: (1) that the defendant in terminating the contracts and in refusing the plaintiffs the right to bid for radio time on a competitive basis, while entering into paid contracts with a few other religious broadcasters possessed the intent ". . . to discriminate illegally against the plaintiffs"; (2) that the notices of cancellations were of no legal effect in that the avowed reason for giving them was "illegal, invalid, and contrary to the terms and intent of the Federal Communications Act and to the First Amendment"; (3) that the policy of the defendant to give free time for religious broadcasts or "to give some free time and sell other time for religious broadcasts is illegal . . ." is contrary to the Federal Communications Act and to the First Amendment; that the course pursued by the defendant permits it to control the type of religious broadcasts to be sent out over WPEN and constitutes a violation of the right of freedom of speech and the right to the free exercise of religion; and (4) that the clause of the contracts permitting cancellation, "printed on the reverse side of . . . [the] contracts," is without consideration, is too indefinite to be enforceable and is so repugnant to the other terms of the contracts as to be void. We will endeavor to deal with these issues but it is desirable first to make a few general observations respecting the background against which radio broadcasting stations licensed by the Federal Communications Commission operate.

It is plain, as indeed both the plaintiffs and the defendant agree, that a radio broadcasting station must operate in the public interest and must be deemed to be a "trustee" for the public. It is unnecessary to review in this opinion the history of the various Federal statutes culminating in the Federal Communications Act which will demonstrate the correctness of the foregoing statement,[5] in view of the opinions of Mr. Justice Frankfurter in National Broadcasting Co. v. United States (1943) 319 US 190, 87 L ed 1344, 49 PUR(NS) 470, 63 S Ct 997, and Federal Communications Commission v. Pottsville Broadcasting Co. (1940) 309 US 134, 84 L ed 656, 33 PUR(NS) 75, 60 S Ct 437. It is clear from history and the interpretation of the Federal Communications Act that the choice of programs rests with the broadcasting stations licensed by the FCC. See also 1 Socolow, Law of Radio Broadcasting, §§ 214–219, pp. 232-239. Censorship by the FCC is prohibited by § 326[6] of the act, 47 USCA § 326.

[4] In pertinent part as follows: " . . . a person engaged in radio broadcasting shall not, in so far as such person is so engaged, be deemed a common carrier."

[5] See The Wireless Ship Act, 46 USCA §§ 484–487, The Radio Act of 1912, 47 USCA §§ 51–63, repealed. The Radio Act of 1927, 47 USCA §§ 81–119, repealed.

[6] In pertinent part as follows: "Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication."

The authority of the Commission as defined in § 303, 47 USCA § 303, includes the power to pass upon such allegations of unfair treatment as the plaintiffs make here respecting the defendant. The Commission may refuse to renew the defendant's license if it has failed to act in the public interest. Indeed certain of the plaintiffs have complained to the Commission of the defendant's actions which are the basis for the suit at bar, but the Commission was of the opinion that the defendant's action in canceling the contracts was not against the public interest.[7] In the case at bar, however, we are concerned only with the question of whether the plaintiffs have stated any cause of action against the defendant cognizable in a district court of the United States. We are of the opinion that they have not done so for the reasons stated immediately hereinafter.

[1, 2] The causes of action which the plaintiffs seek to assert and which we have set out above, with the exception of the group of allegations which we have designated as (4), endeavor to assert violations of the Constitution or of laws of the United States. The group of allegations which we have designated as (1) seems to attempt to assert a violation of the antitrust laws of the United States despite the fact that neither the Sherman Act[8] nor the Clayton Act[9] is mentioned in the plaintiffs' pleading. This is not in itself of great importance but the allegations of the amended complaint are insufficient to state any cause of action under the antitrust laws. For example, it is not alleged that the defendant is in a dominant position in the broadcasting field or that it is a member of a chain which so monopolizes radio broadcasting as to render it impossible for the plaintiffs to find other outlets for their broadcasts. Neither conspiracy nor concert of action is asserted. As we stated in William Goldman Theatres v. Loew's (1945) 150 F2d 738, 743, paraphrasing a statement in United States v. Socony-Vacuum Oil Co. (1939) 105 F2d 809, 825, "The purpose of the antitrust laws—an intendment to secure equality of opportunity—is thwarted if group power is utilized to eliminate a competitor who is equipped to compete." The plaintiffs do not allege that the defendant seeks to eliminate a competitor by refusing to sell radio time to the plaintiffs. It is not asserted that the defendant entered into a conspiracy with the plaintiffs' competitors in religious broadcasting to eliminate the plaintiffs from the religious broadcasting field. Indeed, in justice to the plaintiffs it should be stated that they do not assert expressly that they are competitors in a field of religious broadcasting or that religious broadcasting is a

[7] The Commission by its News Release dated April 24, 1945, stated in part: "The Commission has carefully considered the matters alleged in your complaint and the representations made to it by the licensee of Station WPEN to determine whether there has been a violation of the licensee's obligation to operate in the public interest. The Commission is of the opinion that the representations of Station WPEN are consonant with the licensee's obligation to present a diversified and well-rounded program service. For the foregoing reasons, the Commission has today denied your petition."

An appeal lay from the order of the Commission under § 402(a) of the Federal Communications Act, 47 USCA § 402(a). See the Urgent Deficiencies Act, 28 USCA § 47. None of the plaintiffs availed themselves of the right of review thus afforded.

[8] See 15 USCA §§ 1 and 2.

[9] See 15 USCA § 13.

commodity. Properly they have avoided such allegations but the plaintiffs have stated no cause of action under the antitrust laws of the United States.

These allegations may conceivably be construed as relating to some vague charge of unfair competition. But the plaintiffs do not assert that they are selling a commodity. The allegations seem to charge an "illegal discrimination" in that the defendant insists on preferring other religious broadcasters to the plaintiffs. But there is no reason, the FCC permitting and no violation of the antitrust laws being involved, why the defendant may not sell time to whomever it pleases. As we have stated, Congress has confided the selection of program material to be broadcast to the taste and discrimination of the broadcasting stations.

[3–6] As to the groups of allegations which we have designated as (2) and (3) we conclude that they state no cause of action. The plaintiffs have cited no specific provision of the Federal Communications Act which has been violated by the defendant and we can find none. In any event the enforcement of the act rests in the FCC and not in the district courts of the United States save for a right of review of the Commissioner's orders afforded under § 402(a). Nor do we perceive how it may be said that because the defendant has canceled broadcasting contracts in accordance with a written provision contained in them that the plaintiffs' rights to freedom of speech and to the free exercise of religion have been abridged. True, if a man is to speak or preach he must have some place from which to do it. This does not mean, however, that he may seize a particular radio station for his forum. See the apt language of Mr. Justice Frankfurter in National Broadcasting Co. v. United States, *supra*, 319 US at p. 226, 87 L ed at p. 1368, 49 PUR(NS) at p. 492, 63 S Ct at p. 1014, "Unlike other modes of expression radio inherently is not available to all."

Assuming arguendo that the defendant's cancellations of the plaintiffs' contracts have limited plaintiffs' opportunities to speak or preach freely, the First Amendment was intended to operate as a limitation to the actions of Congress and of the Federal government. The defendant is not an instrumentality of the Federal government but a privately owned corporation. The plaintiffs seek to endow WPEN with the quality of an agency of the Federal government and endeavor to employ a kind of "trustee-of-public-interest" doctrine to that end. But Congress has not made WPEN an agency of government. For this court to adopt the view that it has such a status would be judicial legislation of the most obvious kind.

Finally, on this particular aspect of the case at bar, we state that we know of no Federal statute which gives a cause of action against a private person who has abridged another's right to freedom of speech or to the free exercise of religion. Cf. Screws v. United States (1945) 325 US 91, 89 L ed 1495, 65 S Ct 1031, and Picking v. Pennsylvania R. Co. (1945) 151 F2d 240.

[7, 8] The assertion that the actions of the defendant constitute censorship has in essence been discussed in the foregoing paragraphs. For a

radio station to refuse to sell time in which an individual may broadcast his views may be censorship but we know of no law which prohibits such a course. As we have indicated a radio broadcasting station is not a public utility in the sense that it must permit broadcasting by whoever comes to its microphones. Cf. Pulitzer Publishing Co. v. Federal Communications Commission (1937) 68 App DC 124, 94 F2d 249.

[9–11] As to the group of allegations which we have designated as (4) containing the specific assertions that the defendant could not cancel the contracts because the cancellation clause was without consideration and invalid because indefinite and repugnant to other provisions of the contracts we conclude that here also the plaintiffs have failed to state a cause of action. Since this portion of the complaint is based strictly on diversity jurisdiction, the questions of law must be determined by the law of Pennsylvania[10] for it must be presumed, in view of the absence of allegations to the contrary,[11] that the contracts were executed and delivered in Pennsylvania.[12] Such cancellation provisions are supported by the law of Pennsylvania. See Philadelphia Ball Club v. Lajoie (1902) 202 Pa 210, 51 Atl 973, 58 LRA 227, 90 Am St Rep 627 and Dick v. Ireland (1890) 130 Pa 299, 317, 18 Atl 735, 736. Cancellation provisions are not uncommon in radio broadcasting contracts. See the comments of the FCC in In Re Kindig (1936) 3 FCC 313. There was consideration supporting the clauses; indeed, it was the identical consideration which supported the contracts. The plaintiffs entered into the agreements fully aware that cancellation was provided for. The validity of the unilateral option reserved to the defendant is too clear to require extended discussion. See the Pennsylvania decisions cited in this paragraph.

The court below dismissed the amended complaint upon the motion of the defendant on the ground that it stated no cause of action against the defendant. It committed no error in doing so.

Judgment affirmed.

[10] See Ruhlin v. New York Life Ins. Co. (1938) 304 US 202, 82 L ed 1290, 58 S Ct 860, and Guaranty Trust Co. v. York (1945) 326 US —, 89 L ed —, 65 S Ct 1464.

[11] See Black & Yates v. Mahogany Asso. (1941) 129 F2d 227, 233, 148 ALR 841.

[12] See New York Life Ins. Co. v. Levine (1943) 138 F2d 286, 288, and the authorities cited in note 4 of Judge Maris' opinion.

tric utility companies that are using this PA* slidefilm presentation on *Electronic* uction Heating recognize its double-duty e in load building.

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This co-operative long-range plan has been built around a series of load-building presentations to be made—with your help—to industrial and farm groups. In addition to Electronic Induction Heating, programs are now available on Electronics and Laundry Modernization. Sewage Treatment, Resistance Welding, and a More Power to the American Farmer series will be available early in 1946. They will help you develop (1) greater power sales and utilization of existing capacity, (2) increased use of modern electric equipment, (3) more efficient operation and lower costs for customers. Full utilization of these tools will also mean more jobs and a higher standard of living for all America. For help in putting the MPA program into action in your territory, call on your local G-E office.

GENERAL ELECTRIC

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Industrial Progress

Selected information about products, supplies, and services offered by manufacturers. Also announcements of new literature and changes in personnel.

New Dodge Truck Named "Power-Wagon"

THE name "Power-Wagon" has been given to the sturdy 1-ton general purpose truck announced recently by Dodge as a civilian adaptation of the 4-wheel drive military vehicle which was built in such large numbers during World War II.

Hundreds of names were considered for the full-size truck engineered for rigorous work in many lines of public utility, industrial, agricultural, state highway, and conservation department uses. Forest H. Akers, vice president and director of sales of the Dodge Division of Chrysler Corporation, said the name Power-Wagon was chosen because it so aptly describes the functions of the new 94-horsepower truck.

The Power-Wagon is capable of carrying a payload of 3,000 pounds in off-the-highway service, or over unimproved roads where ordinary trucks are restricted in their operation. In addition, this unit provides power for driving various items of auxiliary equipment.

A transmission power take-off is available with front and rear drive shafts. Through the front drive shaft, this take-off drives a 7,500-pound capacity winch mounted on the front end of the Power-Wagon. This is expected to find wide use in public utility service, wrecker service, oil field work, lumbering, highway, and conservation work.

Ohmite Laboratory Facilities Available to Sponsors

ILLINOIS INSTITUTE OF TECHNOLOGY'S Ohmite Laboratory is making its facilities available to sponsoring organizations, according to Dr. Jesse E. Hobson, director of the institute's Armour Research Foundation.

The result of a $32,500 contribution by David T. Siegel, president of the Ohmite Manufacturing Company, this laboratory will provide precision measurement of electrical and magnetic quantities for the Chicago area, approaching in accuracy those of the Bureau of Standards in Washington.

The Ohmite Laboratory will be the first laboratory of its kind with facilities in the Chicago area available to industry. It will also be used for graduate study and in electrical standardizing work for the various departments of the institute.

Although some equipment for the precision measurement work is not yet available, the laboratory is equipped for the following activities: calibration of standard cells, shunts, standard resistances, capacitors, inductors, direct and alternating current ammeters, voltmeters, wattmeters, and watt-hour meters; conductivity measurements and insulation resistance measurements; determination of the properties of magnetic materials; measurements of power factor and dielectric constant of liquid dielectrics; oscillographic work; and radio and radio frequency measurements including frequency checks and field strength determinations up to 20 megacycles, determination of Q and antenna impedance. The activities are expected to include high-voltage measurements up to 100,000 volts by the middle of 1946.

It is expected that power companies, manufacturers of various kinds of electrical equipment, and colleges in the Chicago area will be among the organizations which will immediately benefit from the project.

Demand-type Oxygen Mask

MINE SAFETY APPLIANCES COMPANY announces the production of a new demand-type oxygen mask for respiratory protection in unbreathable atmospheres. The mask is a cylinder-type oxygen breathing apparatus which, according to the manufacturer, features simplicity and ease of operation combined with dependability.

The MSA demand-type oxygen mask is always ready for use and requires no special training or practice for operation, the wearer needs only to put on the mask, open a valve, and breathe. This product should be of special interest to public utilities, fire departments, and throughout industry, in any situation involving unbreathable atmospheres.

The masks are of two types. One type has an oxygen cylinder on the wearer's back supported by a comfortable adjustable harness. Enough oxygen is supplied for approximately one hour of normal breathing. Also available is a front sling model with smaller cylinder for shorter periods.

The MSA demand-type oxygen mask is equipped with a pressure gauge which indicates the amount of oxygen in the cylinder at

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all times. Fogging of the mask's all-vision facepiece is prevented by a flow of cool oxygen over the lenses.

For a detailed bulletin describing this new MSA demand-type oxygen mask, or for a demonstration by a local representative, write to Mine Safety Appliances Company, Braddock, Thomas, and Meade streets, Pittsburgh 8, Pennsylvania.

Bendix Announces Automatic Home Dryer Specifications

SPECIFICATIONS of the new Bendix automatic home dryer, which will be on the market next summer, were made public recently by L. F. Worth, manager of dryer sales, Bendix Home Appliances, Inc.

Heat controlled by a thermostat will remove the moisture from 18 pounds of wet clothes, making them bone dry in 45 minutes. An automatic regulator determines whether the clothes will be damp dry or bone dry. The degree of damp-dryness can be regulated also. The drying is timed to keep up with the washing in a Bendix automatic home laundry.

Bendix claims five features for its dryer—less wear on clothes due to a smooth drum, exhaust whose direction can be controlled, fast drying, large load, and temperature control.

There will be two models, identical in appearance—one gas heated, and the other electrically heated.

Named Vice President of Sales For Rockwell Company

A. J. KERR, formerly general sales manager, has been elected vice president of sales of the Rockwell Manufacturing Company, Pittsburgh, Colonel Willard F. Rockwell, president and chairman, has announced.

As vice president of sales of the Rockwell Manufacturing Company, Mr. Kerr will coördinate the marketing activities of the various subsidiaries and divisions.

Electrical Living Booklet with Disney Illustrations Announced

FOR consumers, architects, builders, and contractors, a new "Electrical Living" booklet illustrated in color with scenes from the Walt Disney production "The Dawn of Better Living" is announced by the Westinghouse Electric Corporation for distribution through utilities and dealers.

The new 40-page booklet contains many practical ideas on planning and equipping kitchens, laundries, and other rooms, and outlines four degrees of electrification according to the size and type of home. New ideas for

(*Continued on page* 30)

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lighting beauty and comfort are included. Wiring essentials are listed and discussed, and the booklet stresses the necessity for planned wiring adequate for immediate and future electrical needs.

Copies of the new "Electrical Living" booklet (B-3560) are available to utilities and dealers at 10 cents each from Westinghouse distributors.

Koppers Announces Expansions In Technical Service

ANNOUNCEMENT is made by Walter Rothenhoefer, general manager of sales, of further expansion in the technical service organization of Eastern Gas & Fuel Associates, Koppers Coal Division.

Charles H. Sawyer has been appointed research engineer and will supervise the Koppers Coal Division service to customers using or selling coal for heating purposes, as provided through Koppers Coal Division's district service representatives.

Paul J. Stein has been appointed industrial service engineer. He will specialize on the recommendation of coals for industrial and utility steam generating purposes and will aid such coal users in securing best results from the coal used. He also will supervise the service offered by engineers attached to the district offices of Koppers Coal Division.

Earl B. Burton, manager, inspection department, continues to head a group of experienced mining men who are responsible for preparation methods and quality standards of the coal produced at the mines of the Koppers Coal Division.

Electromaster Appoints Bell Director of Utility Sales

ANNOUNCEMENT is made by Gerald Hulett, vice president of Electromaster, Inc., manufacturers of electric ranges and water heaters, of the appointment of Major J. A. Bell as director of utility sales. In his new position, Mr. Bell will be responsible for the company's national sales to direct utility customers.

A member of Electromaster's sales staff for eleven years before the war, Mr. Bell served as district manager covering Illinois-Missouri-Indiana-Iowa territory, and for three years was executive assistant to the vice president in charge of sales. Previously, he was a sales executive connected with utility companies in Topeka, Salina, and St. Louis.

Weaver Made President Ansonia Electrical Co.

WILLIAM J. WEAVER, since 1942 vice president in charge of operations, was recently elected president of The Ansonia Electrical Company, wholly-owned subsidiary of Noma Electric Corporation. Mr. Weaver was formerly associated with the Bryant Electrical Company.

The Ansonia Electrical Company makes power transmission wire, coaxial cable, thermoplastic insulating cable, and insulating wire, for the power, electrical, electronics, television, and building industries.

Hodnette Named Transformer Division Manager

L. E. OSBORNE, senior operating vice president of the Westinghouse Electric Corporation, announced the appointment of John K. Hodnette as manager of the company's transformer division at Sharon, Pennsylvania.

Mr. Hodnette, who has been engineering manager in that division for the past six years, assumes the duties formerly held by H. V. Putman, company vice president in charge of the transformer division, who died recently.

Outstanding among many transformer improvements for which Mr. Hodnette is responsible, and for which he has been granted patents, is the completely self-protected distribution transformer which assures protection against lightning and outages, and minimizes service interruptions.

Controls Catalog Issued

JUST issued, Clarostat catalog No. 46 lists a large variety of resistors, controls, and resistance devices. A copy of the catalog may be had from any Clarostat jobber, or by writing to Clarostat Manufacturing Company, Inc., 285-7 N. 6th st., Brooklyn, New York.

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, financing, design, and construction.

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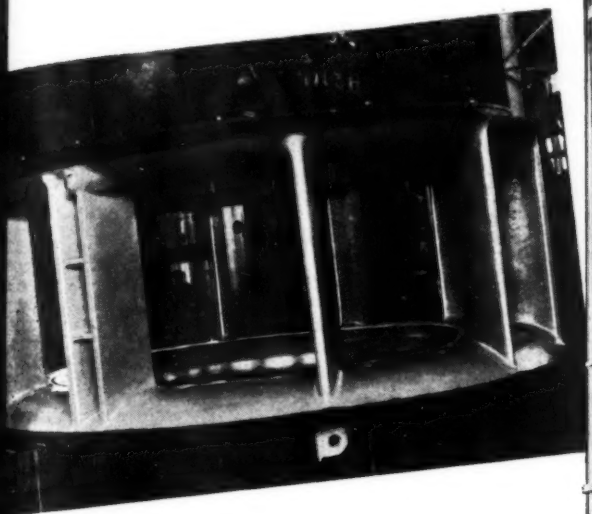

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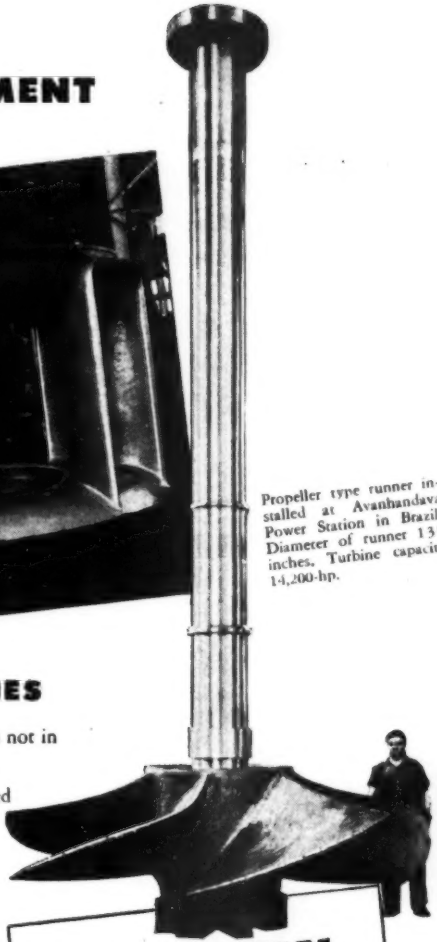

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